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An Update on Michigan's Medical Marihuana Act

Presented by:
Kenneth Stecker
Prosecuting Attorneys Association of Michigan



National Survey-Marihuana Use Increases

- In 2010, 17.4 million Americans were current users of marihuana, compared to 14.4 million in 2007.
- An increase rate of current marihuana use in the population 12 and older from 5.8% in 2007 to 6.9% in 2010.
- "Emerging research reveals potential links between state laws permitting access to smoked marihuana and higher rates of marihuana use." Gil Kerlikowske, director of National Drug Control Policy.
- Source: Substance Abuse and Mental Health Service Administration (SAMHSA), September 8, 2011

Michigan Medical Marihuana Act



Medical Marihuana Trends in USA By State

- 1996 - California
- 1998 - Alaska, Oregon & Washington
- 1999 - Maine
- 2000 - Colorado, Hawaii & Nevada
- 2004 - Montana & Vermont
- 2006 - Rhode Island
- 2007 - New Mexico
- 2008 - Michigan
- 2010 - Arizona, DC & New Jersey
- 2011 - Delaware

Michigan Medical Marihuana Act

Federal Law

- The Federal Controlled Substance Act (CSA) classifies marihuana as a Schedule 1 drug, meaning that Congress recognizes no acceptable medical use for it, and its possession is generally prohibited.
- As a federal court in Michigan recently recognized, "It is indisputable that state medical marihuana laws do not, and cannot supersede federal laws that criminalize the possession of marihuana." United States v. Hicks, United states District Court, E.D. of Michigan, 2010.

Michigan Medical Marihuana Act

Drug Enforcement Administration's Position-June 21, 2011

- Marihuana has a high potential for abuse.
- Marihuana has no currently accepted medical use in treatment in the United States.
- Marihuana lacks accepted safety for use under medical supervision.
- http://www.deadiversion.usdoj.gov/fed_regs/rules/2011/fr0708.htm

Michigan Medical Marihuana Act



Michigan Public Health Code Law-Schedule 1 Drug

- Marihuana is classified as a Schedule 1 drug under the Michigan Public Health Code, MCL 333.7212.
- It is a Schedule 1 drug if the Michigan Board of Pharmacy:

"finds that the substance has high potential for abuse and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision."

Michigan Medical Marihuana Act

Ballot Proposal #1 of 2008

- Permit physician approved use of marihuana by registered patients with debilitating medical conditions cancer, glaucoma, HIV, AIDS, hepatitis C, MS and other conditions as may be approved by the Department of Community Health (MDCH).
- Permit registered individuals to **grow limited amounts** of marihuana for qualifying patients in an enclosed, locked facility.
- Require the Michigan Department of Community Health ("MDCH") to establish an identification card system for patients qualified to use marihuana and individuals qualified to grow marihuana.
- Permit **registered and unregistered** patients and primary caregivers to assert medical reasons for using marihuana as a defense to any prosecution involving marihuana.

Michigan Medical Marihuana Act

Michigan's Medical Marihuana Act

November 4, 2008:

Michigan voters approved Ballot Initiative that legalized Medical Marihuana (MCL 333.26421-333.26430).

On December 4, 2008:

Michigan's Medical Marihuana law takes effect. The law required the MDCH to implement rules within 120 days.

On April 4, 2009:

MDCH adopts rules to implement the Act.

Michigan Medical Marihuana Act

Application Process for the Registry ID Card

- An applicant submits a Department of Licensing and Regulatory Affairs ("LARA") approved application, fee, copy of current photo ID and a physician certification to LARA
 - Fee is \$100 for patient or \$25 if receiving SSI, receiving full Medicaid benefits, or SSD
- LARA reviews and approves/denies application with 15 days of receipt.
- LARA issues registration card with 5 days of approval.
- The statute allows for a copy of the application submitted to serve as a valid registry identification card if the card is not issued within 20 days of its submission to LARA.

Michigan Medical Marihuana Act

Registry Statistics

- Applications received as of 1/31/2012
- 222,413 original and renewal applications received since April 6, 2009
 - 131,483 patients registered
 - The number of caregivers will be posted as soon as an accurate number can be obtained.
- 22,550 applications denied
 - Reason for denial typically is that application is incomplete – missing photo; missing physician certification; application form incomplete; insufficient fee
 - Some denied because medical condition is not covered such as depression or high heel pain
 - Currently, LARA is working on processing valid original applications received at the end of August 2011, and renewal applications received for registrations expiring in **October/November 2011**.

Michigan Medical Marihuana Act

What Does This Mean?

- An application is denied or approved within 15 days of LARA's receipt.
- If denied, the patient is notified within 15 days.
- If not denied, then it is deemed approved and valid.
 - When the card is issued, the date will reflect the 14th day after LARA's receipt. That is when it is approved.
 - An application received on March 1st (business day) will show an issue date of March 17th (14 days after LARA receives it, however, the day of receipt is counted as day 1 for the 15-day approval count).
 - The card will show an expiration date of April 1st of the following year.

Michigan Medical Marihuana Act

Notice of Approval Letter

- On or about February 15, 2012, the Michigan Medical Marihuana Registry Program is sending out "NOTICE OF APPROVAL" letters to qualifying patients and designated caregivers who have not yet received their Medical Marihuana Registry cards.
- This letter will provide notice that the patient or caregiver registry card has been approved.

Michigan Medical Marihuana Act

Notice of Approval Letter

- The letter will:
 - Identify the person by name
 - Provide their Patient or Caregiver Registry Identification Number (which should be verified through a LEIN query for current status)
 - State the Issue Date
 - State the Expiration Date
 - State whether or not the person is allowed to possess marihuana plants

Michigan Medical Marihuana Act

Confidentiality

- LARA keeps a confidential list of the individuals to whom it has issued a card.
- Law enforcement can check if a registration number is valid through LEIN. If the number is valid, then the name on the card for that registrant will be confirmed, only if the patient has given approval.
- Verifications can **ONLY** be given to law enforcement personnel.

Michigan Medical Marihuana Act

MCL 333.26426(h)(4)

- A person, including an employee or official of the department or another state agency or local unit of government, who discloses confidential information in violation of this act is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months.
- Notwithstanding this provision, department employees may notify law enforcement about falsified or fraudulent information submitted to the department.

Michigan Medical Marihuana Act

Identification Card System

LARA has established an identification card system for patients qualified to use Marihuana and individuals qualified to be primary caregivers.

Michigan Medical Marihuana Act

Registry Identifications Cards

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH MEDICAL MARIHUANA PROGRAM	
Registry ID: C777888-333444	Sample Card
No. [Blank]	DOB: 04/05/1980
Photo Available	Issued: 05/25/2010
	Expires: 06/01/2011
Authorized by: YES	Primary Caregiver: YES

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH MEDICAL MARIHUANA PROGRAM	
Registry ID: P444555-110801	Sample Card
No. [Blank]	DOB: 01/02/1980
Photo Available	Issued: 05/25/2010
	Expires: 06/01/2011
Authorized by: NO	Primary Caregiver: NO

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH MEDICAL MARIHUANA PROGRAM	
Registry ID: P888999-110601	Sample Card
No. [Blank]	DOB: 05/06/1995
Photo Available	Issued: 05/25/2010
	Expires: 06/01/2011
NOT AUTHORIZED TO FORGEER PLANTS	

Michigan Medical Marihuana Act

Qualifying Patient

A person who has been diagnosed by a physician as having a debilitating medical condition.



Michigan Medical Marihuana Act

Certain Specific Debilitating Medical Conditions

- Cancer
- Glaucoma
- Positive HIV
- AIDS
- Hepatitis C
- Amyotrophic lateral sclerosis (Lou Gehrig's Disease)
- Crohn's Disease
- Agitation of Alzheimer's disease
- Nail patella
- Treatment of these conditions

Michigan Medical Marihuana Act

Covered Debilitating Medical Conditions

- Cachexia or wasting syndrome
- Severe and chronic pain
- Severe nausea
- Seizures, including but not limited to those characteristics of epilepsy; or
- Severe and persistent muscle spasms

Michigan Medical Marihuana Act

Physician's Role

- Only a physician (MD or DO) fully licensed in Michigan can make a valid written certification
- The certifying physician is not prescribing marihuana, a physician cannot do so.
- The physician is not recommending marihuana; the law does not require them to do so.
- The physician is only stating an "opinion" as to the likelihood of a medical benefit, and can do so under the law without any legal or professional liability, except that a physician is always subject to professional malpractice.

Michigan Medical Marihuana Act

Benefit of Participation in the Registry Identification Program

- A registered "Qualifying Patient" is allowed to possess an amount of marihuana that does not exceed 2.5 ounces of usable marihuana and allowed to cultivate 12 marihuana plants kept in an enclosed, locked facility.
- Either the Qualifying Patient or the Primary Caregiver can be allowed to possess the marihuana plants.
- A qualifying registered patient is protected from "arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau" for medicinal use or possession of marihuana.

Michigan Medical Marihuana Act

Under the Age of 18-MCL 333.2646(b)

- LARA shall not issue a registry card to a patient under the age of 18 years of age unless three criteria are met:
 - (1) Explained the potential risks and benefits to the patient and a parent or guardian;
 - (2) Written certification from two physicians;
 - (3) Parent or guardian consents in writing.

Michigan Medical Marihuana Act

Parent or Guardian's Role

- The parent or legal guardian consents in writing to:
 - (1) Allow the qualifying patient's medical use of marihuana;
 - (2) Serve as the qualifying patient's primary caregiver;
 - (3) Control the acquisition of the marihuana, the dosage, and the frequency of the medical use of marihuana by the qualifying patient. MCL 333.26426(3)

Michigan Medical Marihuana Act

Marihuana-MCL 333.7106

- "Marihuana" means all parts of the plant *Cannabis sativa* L., growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.



Michigan Medical Marihuana Act

Usable Marihuana-MCL 333.26423(j)

- The dried leaves and flowers of the Marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalk, and roots of the plant. MCL 333.26423(j).



Michigan Medical Marihuana Act

Qualifications for Registered Primary Caregiver

- The patient designates an individual as the primary caregiver on the patient's registration application form.

The primary caregiver shall:

- be 21 years old;
- have no felony convictions involving illegal drugs;
- agree to assist patient with medical use of marihuana.

Michigan Medical Marihuana Act

Designation

- The patient designates a caregiver, and has to indicate whether the patient or the caregiver is allowed to cultivate the marihuana plants for the patient's medical use.
- Each patient can only have one caregiver, however, each caregiver can assist no more than five patients.

Michigan Medical Marihuana Act

Possession, Cultivation, and Plant Limits for a Registered Primary Caregiver

- Not to exceed 2.5 ounces of usable marihuana for each qualifying patient to whom he or she is **connected through the department's registration process.** MCL 333.26424(b)(1).
- For each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility. MCL 333.26424(b)(2).

Michigan Medical Marihuana Act

People v. Bylsma, No. 302762 (Mich. App., September 27, 2011)

- "Under the MMMA, a registered primary caregiver is allowed to possess 12 marihuana plants for each registered qualifying patient the primary caregiver is connected to through the Michigan Department of Community Health's (MDCH) registration process."

Michigan Medical Marihuana Act

People v. Bylsma, No. 302762 (Mich. App., September 27, 2011)

- "Because defendant possessed marihuana plants that were being grown and cultivated for registered qualifying patients that were not connected to him through the MDCH's registration process, defendant was not entitled to immunity under § 4(b) of the MMMA."
- "In addition, because defendant did not comply with the requirements of § 4(b), defendant is not entitled to assert the § 8 affirmative defense of medical purpose."

Michigan Medical Marihuana Act

Not Subject to Arrest

These primary caregivers shall not be subject to arrest, prosecution, or civil penalty or disciplinary action by a business or professional licensing board or bureau, for the medical use of Marihuana. MCL 333.26424(b).

Michigan Medical Marihuana Act

Enclosed, Locked Facility

A closet, room, or other enclosed area equipped with locks or other security devices that permit access only by a registered primary caregiver or registered qualifying patient. MCL 333.26423(c).



Michigan Medical Marihuana Act

Michigan Attorney General's Position-June 28, 2011

- The Attorney General opined that "The Michigan Medical Marihuana Act, prohibits the joint cooperative cultivation or sharing of marihuana plants because each patient's plants must be grown and maintained in a separate enclosed, locked facility that is only accessible to the registered patient or the patient's registered primary caregiver."



Michigan Medical Marihuana Act

People v. King, Shiawassee Circuit Court, September 30, 2009

- Chain-link dog kennel behind the house, 6 feet tall, but had an open top and was not anchored to the ground.
- Marihuana plants growing inside defendant's unlocked living room closet.
- Defendant charged with two counts of manufacturing marihuana.
- Defendant asserted affirmative defense under Section 8 of the Act.
- Prosecutor argued that the Defendant failed to comply with the Act because marihuana plants not in an enclosed, locked facility.
- The Circuit Court agreed with the Defendant and dismissed the case.

Michigan Medical Marihuana Act

People v King, No. 294682 (Mich. App., February 3, 2011)

- "The kennel had a lock on the chain-link door, but had no fencing or other material over the top and it could be lifted off the ground."
- "Enclosed area" follows the word "closet" and "room," both of which have specific limited meanings and which have the common characteristic of being stationery and closed on all sides.

Michigan Medical Marihuana Act

People v King, No. 294682 (Mich. App.,
February 3, 2011)

- Trial court's conclusion that defendant acted as a "security device" for the marihuana growing inside his home is pure sophistry and belied by defense counsel's unsurprising admission at oral argument that, at times, defendant left the property, thus leaving the marihuana without a "security device" and accessible to someone other than defendant as the registered patient."

Michigan Medical Marihuana Act

People v King, No. 142850 (Mich. Sup.
Ct., June 22, 2011)

- The Michigan Supreme Court granted the Defendant's application for leave to appeal.
- The Attorney General, the Criminal Defense Attorneys of Michigan, and the Prosecuting Attorneys Association of Michigan are invited to file brief *amicus curiae*.



Michigan Medical Marihuana Act

Seizure and Forfeiture

"Any marihuana, marihuana paraphernalia, or licit property that is possessed, owned, or used in connection with the medical use of marihuana, as allowed under this act, or acts incidental to such use, shall not be seized or forfeited." MCL 333.26424(h).

Michigan Medical Marihuana Act

No Probable Cause

The possession or application for a registry identification card does not constitute probable cause or reasonable suspicion and could not be used to support the search of the person or property of an individual who possesses or applies for a card, or otherwise subject the person to inspection by local, county, or state governmental agencies. MCL 333.26426(g).

Michigan Medical Marihuana Act

What About Insurance Coverage?

- MCL 333.26427 (c)(1) reads that:
 - "Nothing in this act shall be construed to require:
 - (1) A government medical assistance program or commercial or non-profit health insurer to reimburse a person for costs associated with the medical use of marihuana."

Michigan Medical Marihuana Act

What is Prohibited Under MCL 333.2647?

- Smoking marihuana "in any public place"
- Smoking marihuana on any form of public transportation
- Any use by a person who has no serious or debilitating medical condition
- Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marihuana
- Any use or possession in a school bus
- Any use or possession on the grounds of any preschool, primary, or secondary school
- Any use or possession in any correctional facility

Michigan Medical Marihuana Act

Other Michigan Laws

MCL 333.26427(e) reads that:
"All other acts and parts of acts
inconsistent with this act do not
apply to the **medical use** of
marihuana as provided by this act."

Michigan Medical Marihuana Act

Operation of a Motor Vehicle

- Although the Act prohibits the operation of any motor vehicle while under the influence of Marihuana; it does not make reference to Michigan's current OUID Per Se Law.



Michigan Medical Marihuana Act

People v. Koon, November 16, 2010

- The Circuit Court ruled that:
"The MMMA, which supersedes MCL 257.625, states that qualified patients are proscribed from operating a motor vehicle while under the influence of marihuana. Therefore, evidence of impairment is a necessary requirement."

Michigan Medical Marihuana Act

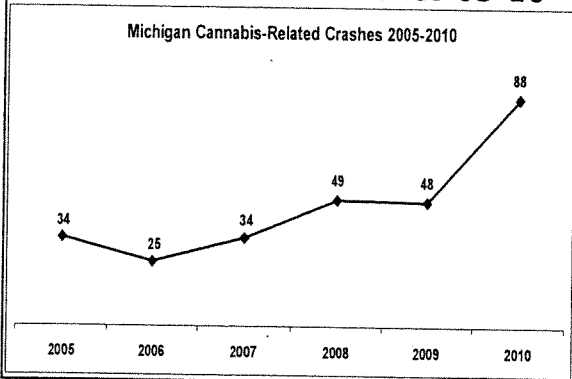
People v Koon, No. 301443, July 22, 2011

- The Michigan Court of Appeals granted the People's Application for Leave to Appeal.
- Judge O'Connell would have peremptorily reversed the circuit court's order of November 16, 2010, and remanded for further proceedings:

"Prior to the passage of the MMMA, Michigan law prohibited operation of a motor vehicle with any amount of marihuana in the body. MCL 257.625(8). The MMMA did not change the law."

Michigan Medical Marihuana Act

Cannabis-Related Crashes 05-10



Statutory Affirmative Defense

MCL 333.26428(a) states that "Except as provided in Section 7, a patient and a patient's primary caregiver, if any, may assert, the medical purpose for using marihuana as a defense to any prosecution involving marihuana."

Michigan Medical Marihuana Act

Evidentiary Hearing

- Pursuant to MCL 333.26428(a)(3), "A person may assert the medical purpose for using marihuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the person shows the elements listed in subsection (a)."

Michigan Medical Marihuana Act

Element #1 Under Section 8: Physician's Statement

A physician (Licensed M.D./D.O.) has stated that:

- In the physician's professional opinion
- After having completed a full assessment of the patient's medical history and patient's medical condition
- Which assessment was made in the course of a bona-fide physician-patient relationship
- That the patient is likely to receive therapeutic or palliative benefit
- From the medical use of marihuana
- To treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

Michigan Medical Marihuana Act

Element #2 Under Section 8: Reasonably Necessary Quantity

The patient and the patient's primary caregiver, if any, were collectively:

- In possession of a quantity of marihuana that was:
- Not more than was reasonably necessary
- To ensure the uninterrupted availability of marihuana
- For the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

Michigan Medical Marihuana Act

Element #3 Under Section 8: Medical Use

The patient and the patient's primary caregiver

- Were engaged in the:
- Acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana
- To treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

Michigan Medical Marihuana Act

People v. Redden, No. 295809 (Mich. App., September 14, 2010)

- "The ballot proposal explicitly informed voters that the law would permit registered and unregistered patients to assert medical reasons for using marihuana as a defense to any prosecution involving marihuana."
- "We hold that the district court did not err by permitting defendants to raise the affirmative defense even though neither satisfied the registry-identification-card requirement of section 4." Page 11.

Michigan Medical Marihuana Act

People v. Redden, No. 295809 (Mich. App., September 14, 2010)

- "The MMMA does not define the phrase bona fide physician-patient relationship."
- "We find that there was evidence in this particular case that the doctor's recommendations did not result from assessments made in the course of bona fide physician-patient relationships."
- "Indeed, the facts at least raise an inference that defendants saw Dr. Eisenbud not for good-faith medical treatment but in order to obtain marihuana under false pretenses."

Michigan Medical Marihuana Act

People v. Redden, Concurrence

- Whether the physician signing the written certification form is the patient's primary caregiver;
- Whether the patient has an established history of receiving medical care from that physician;
- Whether the physician has diagnosed the patient with a particular debilitating medical condition;
- Whether the physician has been paid to sign the written certification;
- Whether the physician has a history of signing an unusually large number of such certifications.

Michigan Medical Marihuana Act

People v. Redden, Concurrence

- Footnote 20, page 15:
- "It is beyond question that 100, 500, 1,000 terminally ill patients, with a 10 minute examination, has not been acting pursuant to bona fide physician-patient relationship."
- "A revolving-door rubber-stamp, assembly line certification process does not constitute activity in the course of a bona fide physician-patient relationship."

Michigan Medical Marihuana Act

People v. Kolanek, No. 295125 (Mich. App., January 11, 2011)

- The case required the Michigan Court of Appeals to consider an issue of first impression as to when a physician must provide the statement under MCL 333.26428(a)(1).
- "We conclude that has stated requires that the physician's opinion occur prior to arrest. First, because the term is past tense, the initiative must have intended that the physician's opinion be stated prior in time to some event."

Michigan Medical Marihuana Act

People v. Rigo, 69 Cal. App.
4th 409 (1999)

- The Court ruled that compassionate use statute did not extend to physician's post-arrest ratification of defendant's self-medication.
- "Defendant's medical condition did not bring him to consult a doctor; rather the Twin Cities police officers did. There are no excuses, or 'exigent circumstances' to validate the approval or recommendation over three months after the defendant's arrest."

Michigan Medical Marijuana Act

People v. Kolanek, No. 142712
(Mich. Sup. Ct., June 22, 2011)

- The Michigan Supreme Court granted the Defendant's application for leave to appeal.
- The Attorney General, the Criminal Defense Attorneys of Michigan, and the Prosecuting Attorneys Association of Michigan are invited to file brief *amicus curiae*.



Michigan Medical Marijuana Act

People v. Anderson, No. 300641
(Mich. App., June 7, 2011)

- The Court ruled that "A trial court may bar a defendant from presenting evidence and arguing a section 8 defense at trial where, given the undisputed evidence no reasonable jury could find that the elements of the section 8 defense had been met."
- As there was no dispute about the amount of plants Defendant possessed, or that the plants were not kept in an enclosed locked facility, "no reasonable jury could, therefore, find that he had 12 or fewer plants or that the plants were in an enclosed, locked facility."

Michigan Medical Marijuana Act

State of Michigan v. McQueen, August 23, 2011-Michigan Court of Appeals

- "The 'medical use' of marihuana, as defined by the MMMA, does not include patient-to-patient 'sales' of marihuana, and no other provision of the MMMA can be read to permit such sales."
- "Therefore, defendants have no authority to actively engage in and carry out the selling of marihuana between CA members."

Michigan Medical Marihuana Act

State of Michigan v. McQueen, August 23, 2011-Michigan Court of Appeals

- "The MMMA does not expressly authorize marihuana dispensaries."
- "Defendant's violation of the Michigan Public Health Code is not excused by the MMMA because defendants do not operate Compassionate Apothecary in accordance with the provisions of the MMMA."

Michigan Medical Marihuana Act

Casias vs. Wal-Mart, U.S. District Court, decided February 11, 2011

- Civil case in Calhoun County which Wal-Mart fired an employee who tested positive for marihuana which he used while off-duty.
- The Court ruled that the "state's medical marihuana law protects users from arrest, but not employers' policies that ban the use of the drug."



Michigan Medical Marihuana Act

Michigan Attorney General- 9/15/2011

- "Prohibits qualifying registered patients from smoking marihuana in the public areas of food service establishments, hotels, motels, apartment buildings, and any other place open to the public."
- "An owner of a hotel, motel, apartment building, or other similar facility can prohibit the smoking of marihuana and the growing of marihuana plants anywhere within the facility, and imposing such a prohibition does not violate the Michigan Medical Marihuana Act."

Michigan Medical Marihuana Act

Michigan Attorney General- 11/10/2011

- "Section 4(h) of the MMMA is preempted by the CSA to the extent it requires law enforcement officers to return marihuana to registered patients or caregivers. As a result, law enforcement officers are not required to return marihuana to a patient or a caregiver."
- "By returning marihuana to a registered patient or caregiver, a law enforcement officer is exposing himself or herself to potential criminal and civil penalties under the CSA for the distribution of marihuana or for aiding or abetting the possession or distribution of marihuana."

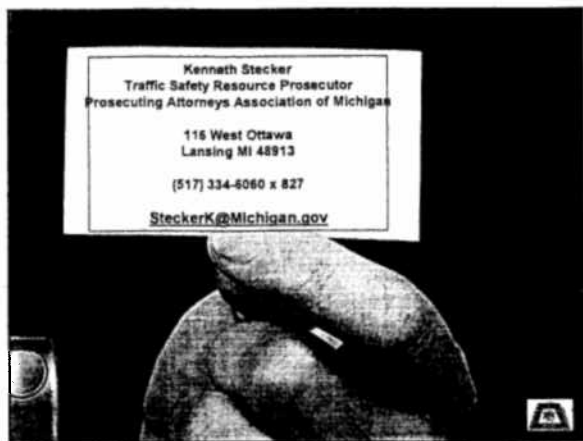
Michigan Medical Marihuana Act

Lott v. City of Livonia, Wayne County Circuit Court, 7/22/11

- "Livonia's ordinance directly conflicts with and is preempted by the MMMA, which regulates the use, distribution, and maintenance of medical marihuana and occupies the field of regulation."
- "However, the MMMA is also preempted by the Controlled Substance Act, which completely bans the use of marihuana and bans its use by physicians for a medical purpose."



Michigan Medical Marihuana Act



Kenneth Stecker
Traffic Safety Resource Prosecutor
Prosecuting Attorneys Association of Michigan
116 West Ottawa
Lansing MI 48913
(517) 334-6060 x 827
SteckerK@Michigan.gov



Michigan Medical Marijuana Act

MICHIGAN MEDICAL MARIHUANA ACT
Initiated Law 1 of 2008

AN INITIATION of Legislation to allow under state law the medical use of marihuana; to provide protections for the medical use of marihuana; to provide for a system of registry identification cards for qualifying patients and primary caregivers; to impose a fee for registry application and renewal; to provide for the promulgation of rules; to provide for the administration of this act; to provide for enforcement of this act; to provide for affirmative defenses; and to provide for penalties for violations of this act.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

The People of the State of Michigan enact:

333.26421 Short title.

1. Short Title.

Sec. 1. This act shall be known and may be cited as the Michigan Medical Marihuana Act.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26422 Findings, declaration.

2. Findings.

Sec. 2. The people of the State of Michigan find and declare that:

(a) Modern medical research, including as found by the National Academy of Sciences' Institute of Medicine in a March 1999 report, has discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions.

(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana.

(c) Although federal law currently prohibits any use of marihuana except under very limited circumstances, states are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. The laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, New Mexico, Oregon, Vermont, Rhode Island, and Washington do not penalize the medical use and cultivation of marihuana. Michigan joins in this effort for the health and welfare of its citizens.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26423 Definitions.

3. Definitions.

Sec. 3. As used in this act:

(a) "Debilitating medical condition" means 1 or more of the following:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.

(2) A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.

(3) Any other medical condition or its treatment approved by the department, as provided for in section 5(a).

(b) "Department" means the state department of community health.

(c) "Enclosed, locked facility" means a closet, room, or other enclosed area equipped with locks or other security devices that permit access only by a registered primary caregiver or registered qualifying patient.

(d) "Marihuana" means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL

333.7106.

(e) "Medical use" means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

(f) "Physician" means an individual licensed as a physician under Part 170 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084, or an osteopathic physician under Part 175 of the public health code, 1978 PA 368, MCL 333.17501 to 333.17556.

(g) "Primary caregiver" means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs.

(h) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(i) "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

(j) "Usable marihuana" means the dried leaves and flowers of the marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.

(k) "Visiting qualifying patient" means a patient who is not a resident of this state or who has been a resident of this state for less than 30 days.

(l) "Written certification" means a document signed by a physician, stating the patient's debilitating medical condition and stating that, in the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26424 Qualifying patient or primary caregiver; arrest, prosecution, or penalty prohibited; conditions; presumption; compensation; physician subject to arrest, prosecution, or penalty prohibited; marihuana paraphernalia; person in presence or vicinity to medical use of marihuana; registry identification issued outside of department; sale of marihuana as felony; penalty.

4. Protections for the Medical Use of Marihuana.

4. Protections for the Medical Use of Marihuana.

Sec. 4. (a) A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act, provided that the qualifying patient possesses an amount of marihuana that does not exceed 2.5 ounces of usable marihuana, and, if the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility. Any incidental amount of seeds, stalks, and unusable roots shall also be allowed under state law and shall not be included in this amount.

(b) A primary caregiver who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with this act, provided that the primary caregiver possesses an amount of marihuana that does not exceed:

(1) 2.5 ounces of usable marihuana for each qualifying patient to whom he or she is connected through the department's registration process; and

(2) for each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility; and

(3) any incidental amount of seeds, stalks, and unusable roots.

(c) A person shall not be denied custody or visitation of a minor for acting in accordance with this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly

articulated and substantiated.

(d) There shall be a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marihuana in accordance with this act if the qualifying patient or primary caregiver:

(1) is in possession of a registry identification card; and

(2) is in possession of an amount of marihuana that does not exceed the amount allowed under this act. The presumption may be rebutted by evidence that conduct related to marihuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this act.

(e) A registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana. Any such compensation shall not constitute the sale of controlled substances.

(f) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by the Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, or any other business or occupational or professional licensing board or bureau, solely for providing written certifications, in the course of a bona fide physician-patient relationship and after the physician has completed a full assessment of the qualifying patient's medical history, or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition, provided that nothing shall prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions.

(g) A person shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for providing a registered qualifying patient or a registered primary caregiver with marihuana paraphernalia for purposes of a qualifying patient's medical use of marihuana.

(h) Any marihuana, marihuana paraphernalia, or licit property that is possessed, owned, or used in connection with the medical use of marihuana, as allowed under this act, or acts incidental to such use, shall not be seized or forfeited.

(i) A person shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, solely for being in the presence or vicinity of the medical use of marihuana in accordance with this act, or for assisting a registered qualifying patient with using or administering marihuana.

(j) A registry identification card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows the medical use of marihuana by a visiting qualifying patient, or to allow a person to assist with a visiting qualifying patient's medical use of marihuana, shall have the same force and effect as a registry identification card issued by the department.

(k) Any registered qualifying patient or registered primary caregiver who sells marihuana to someone who is not allowed to use marihuana for medical purposes under this act shall have his or her registry identification card revoked and is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both, in addition to any other penalties for the distribution of marihuana.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26425 Rules.

5. Department to Promulgate Rules.

Sec. 5. (a) Not later than 120 days after the effective date of this act, the department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that govern the manner in which the department shall consider the addition of medical conditions or treatments to the list of debilitating medical conditions set forth in section 3(a) of this act. In promulgating rules, the department shall allow for petition by the public to include additional medical conditions and treatments. In considering such petitions, the department shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The department shall, after hearing, approve or deny such petitions within 180 days of the submission of the petition. The approval or denial of such a petition shall be considered a final department

action, subject to judicial review pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Jurisdiction and venue for judicial review are vested in the circuit court for the county of Ingham.

(b) Not later than 120 days after the effective date of this act, the department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that govern the manner in which it shall consider applications for and renewals of registry identification cards for qualifying patients and primary caregivers. The department's rules shall establish application and renewal fees that generate revenues sufficient to offset all expenses of implementing and administering this act. The department may establish a sliding scale of application and renewal fees based upon a qualifying patient's family income. The department may accept gifts, grants, and other donations from private sources in order to reduce the application and renewal fees.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26426 Administration and enforcement of rules by department.

6. Administering the Department's Rules.

Sec. 6. (a) The department shall issue registry identification cards to qualifying patients who submit the following, in accordance with the department's rules:

- (1) A written certification;
- (2) Application or renewal fee;
- (3) Name, address, and date of birth of the qualifying patient, except that if the applicant is homeless, no address is required;
- (4) Name, address, and telephone number of the qualifying patient's physician;
- (5) Name, address, and date of birth of the qualifying patient's primary caregiver, if any; and
- (6) If the qualifying patient designates a primary caregiver, a designation as to whether the qualifying patient or primary caregiver will be allowed under state law to possess marihuana plants for the qualifying patient's medical use.

(b) The department shall not issue a registry identification card to a qualifying patient who is under the age of 18 unless:

- (1) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marihuana to the qualifying patient and to his or her parent or legal guardian;
- (2) The qualifying patient's parent or legal guardian submits a written certification from 2 physicians; and
- (3) The qualifying patient's parent or legal guardian consents in writing to:
 - (A) Allow the qualifying patient's medical use of marihuana;
 - (B) Serve as the qualifying patient's primary caregiver; and
 - (C) Control the acquisition of the marihuana, the dosage, and the frequency of the medical use of marihuana by the qualifying patient.

(c) The department shall verify the information contained in an application or renewal submitted pursuant to this section, and shall approve or deny an application or renewal within 15 days of receiving it. The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, or if the department determines that the information provided was falsified. Rejection of an application or renewal is considered a final department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the circuit court for the county of Ingham.

(d) The department shall issue a registry identification card to the primary caregiver, if any, who is named in a qualifying patient's approved application; provided that each qualifying patient can have no more than 1 primary caregiver, and a primary caregiver may assist no more than 5 qualifying patients with their medical use of marihuana.

(e) The department shall issue registry identification cards within 5 days of approving an application or renewal, which shall expire 1 year after the date of issuance. Registry identification cards shall contain all of the following:

- (1) Name, address, and date of birth of the qualifying patient.
- (2) Name, address, and date of birth of the primary caregiver, if any, of the qualifying patient.
- (3) The date of issuance and expiration date of the registry identification card.
- (4) A random identification number.
- (5) A photograph, if the department requires 1 by rule.

(6) A clear designation showing whether the primary caregiver or the qualifying patient will be allowed under state law to possess the marihuana plants for the qualifying patient's medical use, which shall be determined based solely on the qualifying patient's preference.

(f) If a registered qualifying patient's certifying physician notifies the department in writing that the patient has ceased to suffer from a debilitating medical condition, the card shall become null and void upon notification by the department to the patient.

(g) Possession of, or application for, a registry identification card shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any local, county or state governmental agency.

(h) The following confidentiality rules shall apply:

(1) Applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and physicians, are confidential.

(2) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(3) The department shall verify to law enforcement personnel whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

(4) A person, including an employee or official of the department or another state agency or local unit of government, who discloses confidential information in violation of this act is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months, or a fine of not more than \$1, 000.00, or both. Notwithstanding this provision, department employees may notify law enforcement about falsified or fraudulent information submitted to the department.

(i) The department shall submit to the legislature an annual report that does not disclose any identifying information about qualifying patients, primary caregivers, or physicians, but does contain, at a minimum, all of the following information:

- (1) The number of applications filed for registry identification cards.
- (2) The number of qualifying patients and primary caregivers approved in each county.
- (3) The nature of the debilitating medical conditions of the qualifying patients.
- (4) The number of registry identification cards revoked.
- (5) The number of physicians providing written certifications for qualifying patients.

History: 2008, Initiated Law I, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

In subsection (h)(4), the dollar amount "\$1, 000.00" contains a space between the comma and first zero, and evidently should read "\$1,000.00".

333.26427 Scope of act; limitations.

7. Scope of Act.

Sec. 7. (a) The medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of this act.

(b) This act shall not permit any person to do any of the following:

(1) Undertake any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice.

(2) Possess marihuana, or otherwise engage in the medical use of marihuana:

- (A) in a school bus;
- (B) on the grounds of any preschool or primary or secondary school; or
- (C) in any correctional facility.

(3) Smoke marihuana:

- (A) on any form of public transportation; or
- (B) in any public place.

(4) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marihuana.

(5) Use marihuana if that person does not have a serious or debilitating medical condition.

(c) Nothing in this act shall be construed to require:

(1) A government medical assistance program or commercial or non-profit health insurer to reimburse a

person for costs associated with the medical use of marihuana.

(2) An employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.

(d) Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marihuana to avoid arrest or prosecution shall be punishable by a fine of \$500.00, which shall be in addition to any other penalties that may apply for making a false statement or for the use of marihuana other than use undertaken pursuant to this act.

(e) All other acts and parts of acts inconsistent with this act do not apply to the medical use of marihuana as provided for by this act.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26428 Defenses.

8. Affirmative Defense and Dismissal for Medical Marihuana.

Sec. 8. (a) Except as provided in section 7, a patient and a patient's primary caregiver, if any, may assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana, and this defense shall be presumed valid where the evidence shows that:

(1) A physician has stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition;

(2) The patient and the patient's primary caregiver, if any, were collectively in possession of a quantity of marihuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marihuana for the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition; and

(3) The patient and the patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

(b) A person may assert the medical purpose for using marihuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the person shows the elements listed in subsection (a).

(c) If a patient or a patient's primary caregiver demonstrates the patient's medical purpose for using marihuana pursuant to this section, the patient and the patient's primary caregiver shall not be subject to the following for the patient's medical use of marihuana:

(1) disciplinary action by a business or occupational or professional licensing board or bureau; or

(2) forfeiture of any interest in or right to property.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26429 Failure of department to adopt rules or issue valid registry identification card.

9. Enforcement of this Act.

Sec. 9. (a) If the department fails to adopt rules to implement this act within 120 days of the effective date of this act, a qualifying patient may commence an action in the circuit court for the county of Ingham to compel the department to perform the actions mandated pursuant to the provisions of this act.

(b) If the department fails to issue a valid registry identification card in response to a valid application or renewal submitted pursuant to this act within 20 days of its submission, the registry identification card shall be deemed granted, and a copy of the registry identification application or renewal shall be deemed a valid registry identification card.

(c) If at any time after the 140 days following the effective date of this act the department is not accepting applications, including if it has not created rules allowing qualifying patients to submit applications, a notarized statement by a qualifying patient containing the information required in an application, pursuant to

section 6(a)(3)-(6) together with a written certification, shall be deemed a valid registry identification card.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26430 Severability.

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

Department of Licensing and Regulatory Affairs
Michigan Medical Marihuana Registry
P.O. Box 30083
Lansing, MI 48909
www.michigan.gov/mmp

Instructions for Applying for a Medical Marihuana Registry Identification Card

To be eligible for the Michigan Medical Marihuana Registry, you must complete the application packet and submit the following information together in one envelope:

☐ APPLICATION FORM FOR REGISTRY IDENTIFICATION CARD

- **REQUIRED:** Complete **Section A: APPLICANT/PATIENT INFORMATION**
- **IF APPLICABLE:** Complete **Section B: PRIMARY CAREGIVER**
 - Required if you are designating a caregiver
 - "Primary caregiver" means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs
- **REQUIRED:** Complete **Section C: PERSON ALLOWED TO POSSESS PATIENT'S MARIHUANA PLANTS**
- **REQUIRED:** Complete **Section D: CERTIFYING PHYSICIAN INFORMATION**
- **REQUIRED:** **Section E: ATTESTATION, SIGNATURE, & DATE**
 - The Patient must sign and date the application

☐ COPY OF PATIENT'S CURRENT PHOTO IDENTIFICATION

☐ PHYSICIAN CERTIFICATION FROM MICHIGAN LICENSED MD/DO

- Your physician must complete and sign the Physician Certification form. This must be submitted with your application. **DO NOT** send or have medical records sent to the registry program.

☐ CAREGIVER ATTESTATION

- Required if you designated a caregiver in Section B

☐ COPY OF CAREGIVER'S CURRENT PHOTO IDENTIFICATION (IF APPLICABLE)

☐ \$100.00 APPLICATION FEE or \$25.00 APPLICATION FEE if patient is currently enrolled in Medicaid or receiving SSI or SSD, and submits the appropriate supporting documents

- Check or money order only. Make payable to "State of Michigan—MMMP." Do not send cash.

☐ COPY OF DOCUMENTATION VERIFYING RECEIPT OF BENEFITS, IF SUBMITTING \$25.00 FEE

- **Acceptable:** Current Social Security Administration document stating the patient receives disability benefits, MI Health card or other Medicaid health plan card (FULL Medicaid Only)
- **NOT ACCEPTABLE:** Medicare card, Bridge card, Bank statements, Social Security IRS Form 1099, Social Security yearly benefits statement, VA disability, Retirement benefits

☐ RETAIN A COPY OF YOUR APPLICATION FOR YOUR FILES

- These are proof that your application is in process.

☐ SEND ALL REQUIRED DOCUMENTS TOGETHER IN ONE ENVELOPE TO THE ADDRESS AT THE TOP OF THIS FORM:

- Do not send any documentation separately from the application.
- Your application will be approved or denied within 15 days of receipt by the department.
 - If determined incomplete, your application will be denied and you will receive a certified letter from the State of Michigan. You can then resubmit a copy of your application with all required documents for reconsideration without an additional fee (unless you were denied for an insufficient fee) for up to one year from receipt of your denied application.
 - If approved, your application will be processed in the date order received. The patient, and if applicable, the caregiver, will then be issued and sent a registry ID card to the mailing address provided on your application.
- If the information provided on the application is determined to be false at any time, your registry ID card will become null and void.

DLARA/MMP-010 (Rev. 4/11)
Department of Licensing and Regulatory Affairs
Michigan Medical Marihuana Registry
P.O. Box 30083
Lansing, MI 48909
www.michigan.gov/mmp

FOR OFFICIAL USE ONLY

APPLICATION FORM FOR REGISTRY IDENTIFICATION CARD

INSTRUCTIONS: Please complete all required information to comply with the registration requirements of the Michigan Medical Marihuana Registry. Attach readable copies of photo ID(s) and your registration fee. The registration fee for this application is \$100.00 or \$25.00 if the patient is enrolled in Medicaid or receiving SSI or SSD (copies of qualifying documentation must be attached). Enclose your check or money order made payable to *State of Michigan—MMMP*. We do not accept Cash, Credit Cards, or Debit Cards.

PLEASE TYPE OR PRINT LEGIBLY

Section A: APPLICANT/PATIENT INFORMATION (REQUIRED)

NAME (First, M.I., Last)

☐ Male
☐ Female

SOCIAL SECURITY NUMBER

DATE OF BIRTH
/ /

MAILING ADDRESS

PHONE NUMBER
()

CITY

STATE
MI

ZIP CODE

ALTERNATE PHONE NUMBER
()

Photo Identification: A clear photocopy of one of the following must be attached. Please check appropriate box:

☐ MI Driver's License or MI ID Card #

☐ Other

Section B: PRIMARY CAREGIVER (IF APPLICABLE)

NAME (First, M.I., Last)

☐ Male
☐ Female

SOCIAL SECURITY NUMBER

DATE OF BIRTH
/ /

MAILING ADDRESS

TELEPHONE NUMBER
()

CITY

STATE
MI

ZIP CODE

ALTERNATE PHONE NUMBER

Photo Identification: A clear photocopy of one of the following must be attached. Please check appropriate box:

☐ MI Driver's License or MI ID Card #

☐ Other

Section C: PERSON ALLOWED TO POSSESS PATIENT'S MARIHUANA PLANTS (REQUIRED)

SELECT ONE: ☐ APPLICANT/PATIENT ☒ PRIMARY CAREGIVER (Caregiver Attestation & photo ID Required)

If neither or both boxes are checked above, plant possession will default to the Applicant/Patient.

Section D: CERTIFYING PHYSICIAN INFORMATION (REQUIRED)

PHYSICIAN'S NAME

MAILING ADDRESS

TELEPHONE NUMBER
()

Section E: ATTESTATION, SIGNATURE, & DATE (REQUIRED)

By signing below, I attest that the information I have entered on this application is true and accurate:

Signature of Applicant/Patient

Date

Department of Licensing and Regulatory Affairs
Michigan Medical Marihuana Registry
P.O. Box 30083
Lansing, MI 48909
www.michigan.gov/mmp

Physician Certification

INSTRUCTIONS: THIS CERTIFICATION IS TO BE COMPLETED IN ITS ENTIRETY BY THE PHYSICIAN. Please complete all of the information required on this form. Sign the form and keep a copy in the patient's medical record. **The patient must submit this certification along with his/her application for a Michigan Medical Marihuana Registry identification card.** This does not constitute a prescription for marihuana. You may contact the Michigan Medical Marihuana Program at (517) 373-0395 if you have any questions or concerns.
PLEASE TYPE OR PRINT LEGIBLY

PHYSICIAN INFORMATION (REQUIRED)

Name (First, M.I., Last)

SELECT ONE: ☐ M.D.
☐ D.O.

MAILING ADDRESS

REQUIRED: MICHIGAN PHYSICIAN LICENSE NUMBER

CITY

STATE

ZIP CODE

TELEPHONE NUMBER
()

PHYSICIAN'S STATEMENT (REQUIRED)

I certify that _____ has been diagnosed with
Patient's Name (REQUIRED) Date of Birth

the following debilitating medical condition (check appropriate boxes):

- ☐ Cancer
- ☐ Glaucoma
- ☐ HIV or AIDS Positive
- ☐ Hepatitis C
- ☐ Amyotrophic Lateral Sclerosis
- ☐ Crohn's Disease
- ☐ Agitation of Alzheimer's Disease
- ☐ Nail Patella

OR a medical condition or treatment that produces, for this patient, one or more of the following and which, in the physician's professional opinion, may be alleviated by the medical use of medical marihuana.

- ☐ Cachexia or Wasting Syndrome
- ☐ Severe and Chronic Pain
- ☐ Severe Nausea
- ☐ Seizures (Including but not limited to those characteristic of Epilepsy.)
- ☐ Severe and Persistent Muscle Spasms (Including but not limited to those characteristic of Multiple Sclerosis.)

Physician's Comments: (Please Type or Print Legibly)

CERTIFICATION, SIGNATURE & DATE (REQUIRED)

I hereby certify that I am a physician licensed to practice medicine in Michigan. It is my professional opinion that the applicant has been diagnosed with a debilitating medical condition as indicated above. The medical use of marihuana is likely to be palliative or provide therapeutic benefits for the symptoms or effects of applicant's condition. This is not a prescription for the use of medical marihuana. Additionally, if the patient ceases to suffer from the above identified debilitating condition, I hereby certify I will notify the department in writing.

Physician's Signature

Date

Provide the name and telephone number of contact person at the physician's office to verify validity of certification:

()

(Name - Please Print)

(Telephone Number)

Department of Licensing and Regulatory Affairs
Michigan Medical Marihuana Registry
P.O. Box 30083
Lansing, MI 48909
www.michigan.gov/mmp

Caregiver Attestation

INSTRUCTIONS: Please complete all required information in order to comply with the requirements of the Michigan Medical Marihuana Registry.

PLEASE TYPE OR PRINT LEGIBLY

DECLARATION: (REQUIRED)

I, _____, do hereby declare:

CAREGIVER'S NAME (PRINTED)

that I am willing and able to serve as the primary caregiver for:

PATIENT'S NAME (PRINTED)

I further certify that:

- I am at least 21 years of age
- I have never been convicted of a felony offense involving illegal drugs
- I understand that my caregiver registration will become null and void if I am convicted of a felony offense involving illegal drugs
- I am a caregiver for no more than 5 patients
- I have submitted a copy of my photo ID to my qualifying patient to submit with this application

PRIMARY CAREGIVER INFORMATION: (REQUIRED)

MAILING ADDRESS

TELEPHONE NUMBER

()

CITY

STATE
MI

ZIP CODE

ALTERNATE PHONE NUMBER
()

SOCIAL SECURITY NUMBER

DATE OF BIRTH
/ /

OTHER NAMES USED including maiden names for females: (REQUIRED, IF APPLICABLE)

Attach a separate page if more space required

(First, M.I., Last)

(First, M.I., Last)

(First, M.I., Last)

I understand that it is necessary to secure a criminal conviction history as part of the screening process. I authorize this agency to use the information provided in this application to obtain a criminal conviction history file search from the Central Records Division of the Michigan Department of State Police or other law enforcement or judicial recordkeeping organization to verify if I have been convicted of any felony offenses involving illegal drugs. The statements in this application are true and correct. I have not withheld information that might affect the decision to be made on this application. In signing this application, I am aware that a false statement or dishonest answer may be grounds for denial of my application or revocation of my registration and that such misrepresentation is punishable by law.

Signature of Primary Caregiver

Date

MEDICAL MARIHUANA CASE LAW SUMMARY

January 2012

Prepared by:

Kenneth Stecker
Traffic Safety Resource Prosecutor
Prosecuting Attorneys Association of Michigan

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CASE LAW SUMMARY

January 2012

UNITED STATES SUPREME COURT DECISIONS

Gonzalez v. Raich, 545 U.S. 1 (2005):

Issue: Can Congress criminalize the production and use of homegrown cannabis even where states approve its use for medicinal purposes?

Holding: Yes, the court held that the Commerce Clause gives Congress the authority to prohibit the local cultivation and use of Marihuana contrary to state law.

The United States Supreme Court ruled that under the Commerce Clause of the United States Constitution, the United States Congress may criminalize the production and use of home-grown cannabis even where states approve its use for medicinal purposes.

In a 6-3 opinion delivered by Justice John Paul Stevens, the Court held that the commerce clause gave Congress authority to prohibit the local cultivation and use of marihuana, despite state law to the contrary. Stevens believed that the Court's precedent "firmly established" Congress' commerce clause power to regulate purely local activities that are part of a "class of activities" with a substantial effect on interstate commerce.

The majority ruled that Congress could ban local marihuana use because it was part of such a "class of activities": the national marihuana market. Local use affected supply and demand in the national marihuana market, making the regulation of intrastate use "essential" to regulating the drug's national market.

The majority distinguished the case from *United States v. Alfonso Lopez, Jr.*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000). In those cases, statutes regulated non-economic activity and fell entirely outside Congress' commerce power. In this case, the Court was asked to strike down a particular application of a valid statutory scheme.

United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483 (2001):

Issue: Does the Controlled Substance Act contain a common law medical necessity defense?

Holding: No, the court held that there were no common law crimes in federal law and the Controlled Substance Act did not recognize a medical necessity exception regardless of their legal status under states' laws.

The United States Supreme Court rejected the common-law medical necessity defense to crimes enacted under the Federal Controlled Substances Act of 1970, regardless of their legal status under the laws of states such as California that recognize a medical use for marihuana.

Justice Thomas wrote for the majority. The Oakland Cannabis Buyers' Cooperative contended that the Controlled Substances Act was susceptible of a medical necessity exception to the ban on distribution and manufacture of marihuana. The Court concluded otherwise.

Since 1812, the Court had held that there were no common-law crimes in federal law. See *United States v. Hudson and Goodwin*. That is, the law required Congress, rather than the federal courts, to define federal crimes. The Court noted that the Controlled Substances Act did not recognize a medical necessity exception. Thus "a medical necessity exception for marihuana is at odds with the terms of the Controlled Substances Act." When it passed the Controlled Substances Act, Congress made a value judgment that marihuana had "no currently accepted medical use." It was not the province of the Court to usurp this value judgment made by the legislature. Thus, it was wrong for the Ninth Circuit to hold that the Controlled Substances Act did contain a medical necessity defense. It was also wrong for the Ninth Circuit to order the district court to fashion a more limited injunction that would take into account the fact that marihuana was necessary for certain people to obtain relief from symptoms of chronic illnesses.

LOWER FEDERAL COURT DECISION

United States of America v. Michigan Department of Community Health, Case No. 1:10-MC-109, June 3, 2011 (United States District Court, Western District of Michigan):

Issue: Can the DEA have documents turned over to them that involve marihuana illegal activities?

Holding: Yes, the court stated that the DEA is charged with investigating the possession, manufacture and disposition of marihuana and the subpoena issued for the documents pertained to the DEA's investigation.

The Court ordered the Michigan Department of Community Health to turn over the documents to the DEA.

The Court stated that "The subpoena was issued as part of an investigation for violations of the Controlled Substances Act. The DEA is a federal law enforcement agency. It is charged with, among other things, investigating the possession, manufacture and disposition of marihuana, a controlled substance, which are violations of federal law.

The documents sought here include cards identifying persons who are presumably involved in possessing and distributing marihuana contrary to federal law. The subpoena clearly seeks documents relevant to the investigation, the conduct of which is a lawful function of the DEA

Casias v. Wal-Mart, Case No. 1:10-CV-781, February 11, 2011 (United States District Court, Western District of Michigan):

Issue: Does the Michigan Medical Marihuana Act (MMMA) regulate private employment?

Holding: NO, the court held that the MMA provides a potential defense to criminal prosecution or other adverse action by the state, not private employment disputes.

Plaintiff Joseph Casias used to work as an at-will employee for a Wal-Mart store in Battle Creek, Michigan. The company fired him under its drug use policy after he tested positive for marihuana. Mr. Casias sued Wal-Mart Stores East, L.P. in state court for wrongful discharge, claiming that Wal-Mart's application of its drug use policy to him violated the Michigan Medical Marihuana Act ("MMMA").

The Court held that the fundamental problem with Plaintiff's case is that the MMMA does not regulate private employment. Rather, the Act provides a potential defense to criminal prosecution or other adverse action by the state. *See* M.C.L. § 333.26422(b) ("changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana") (emphasis

added); *People v. Redden*, – N.W.2d–, 2010 WL 3611716 (Mich. App. Sept. 14, 2010) (Meter, J.) (“The ballot proposal explicitly informed voters that the law would permit registered and unregistered patients to assert medical reasons for using marihuana as a defense to any prosecution involving marihuana.”) (emphasis added).

The MMMA is directed at governmental conduct, and even here the protection is very narrow. Indeed, the MMMA does not even formally “de-criminalize” the use of medical marihuana; rather, it simply provides an affirmative defense and other similarly limited protections in the face of criminal proceedings.

The Court noted that possession and use of marihuana in Michigan – even for medical purposes – is still a crime. *Id.*, 2010 WL 3611716 (O’Connell, P.J., concurring) (noting that the MMMA provides an affirmative defense, but does not legalize the use of marihuana). All the MMMA does is give some people limited protection from prosecution by the state, or from other adverse state action in carefully limited medical marihuana situations.⁵ The Defendant was charged with possession with intent to deliver cocaine and heroin. He argued that after the purpose of the initial stop was completed, he was illegally detained for questioning. At one point during the stop, the Defendant was seated in the rear of the patrol car and answered questions from the trooper.

MICHIGAN SUPREME COURT DECISION

People v. Feezel, Case No. 138031, June 8, 2010 (Michigan Supreme Court):

Issue: Is 11-Carboxy-THC a derivative of Marihuana and a Schedule 1 Controlled substance?

Holding: No, the court held that 11-Carboxy-THC is not a derivative of marihuana and therefore is not a Schedule 1 Controlled substance.

The victim was walking in the paved portion of a 5 lane road. His BAC was .268. It was dark and raining. The Defendant struck the victim and left the scene. The trial judge precluded admission of any evidence regarding the victim's intoxication. The Defendant was convicted of operating with the presence of a schedule 1 controlled substance causing death, leaving the scene of an accident resulting in death, and OWI, 2nd offense.

The Defendant appealed, claiming that evidence of the victim's intoxication should have been admitted on the issuance of causation, and that the presence of 11-carboxy-THC in his blood did not constitute a schedule 1 controlled substance.

In *People v Derror*, 475 Mich 316 (2006) the Michigan Supreme Court ruled in a 4-3 decision that 11-carboxy-THC, a metabolite of marihuana, is included in the statutory definition as a derivative of marihuana. Accordingly, the *Derror* majority upheld the Defendant's conviction for operating with a schedule 1 controlled substance in her system based upon the presence of 11-carboxy-THC in her blood. Justice Hathaway joined the three *Derror* dissenters in this case to overrule *Derror*.

The majority held that 11-carboxy-THC is not a derivative of marihuana, and therefore is not a schedule 1 controlled substance. Accordingly, they reversed this Defendant's conviction for operating with the presence of a schedule 1 controlled substance causing death. Justices Young, Markman and Corrigan dissented from this holding.

On the other issue, a unanimous Court held that evidence of the victim's extreme intoxication in this case should have been admitted to support the Defendant's claim that the victim's intoxication constituted a superseding cause of his death. They emphasized that intoxication evidence may not be relevant or admissible in all cases.

They emphasize, however, "That evidence of a victim's intoxication may not be relevant or admissible in all cases. Indeed, the primary focus in a criminal trial remains on the Defendant's conduct. Accordingly, any level of intoxication on the part of a victim is not automatically relevant, and the mere consumption of alcohol by a victim does not automatically amount to a superseding cause or de facto gross negligence."

Instead, under MRE 401, a trial Court must determine whether the evidence tends to make the existence of gross negligence more probably or less probable than it would be without the evidence and, if relevant, whether the evidence is inadmissible under the balancing test of MRE 403.

MICHIGAN COURT OF APPEALS DECISIONS

PUBLISHED CASES

People v. Danto, Case No. 303525, November 8, 2012 (Michigan Court of Appeals):

Issue: Whether the trial court properly barred the defendants from discussing the MMMA during trial?

Holding: “Here, defendants have offered nothing to rebut the preliminary examination testimony that the marihuana was kept in various locations throughout defendants’ home, including in the bathroom, living room, kitchen, bedrooms, and a basement with no door at the entrance. Because defendants have not met their burdens of production to establish that the marihuana was kept in an enclosed, locked facility, MCL 333.26424(4), the trial court’s order precluding assertion of the MMA affirmative defense and references to the MMA at trial was not erroneous.”

Therefore, the trial court did not abuse its discretion because defendant had not identified a factual dispute to resolve at an evidentiary hearing or established that the marihuana was kept in an enclosed, locked facility, as required by MCL 333.26424(4). The Court noted that the following language from the *King* decision:

“In *King*, ___ Mich App at ___ (slip op at 4), the majority held that § 8 incorporates by reference other provisions of the MMA where it states “[e]xcept as provided in Section 7” The majority concluded that § 8’s reference to § 7, and § 7(a)’s requirement that the medical use of marihuana be carried out in accordance with the provisions of the act required the defendant to comply with the growing provisions in § 4. The majority held “that, because defendant did not comply with § 4, he also failed to meet the requirements of § 8 and therefore, he is not entitled to the affirmative defense in § 8 and he is not entitled to dismissal of the charges.” *Id.* The majority explained that an unlocked closet and a moveable chain-link dog kennel that was open on the top did not fall within the definition of an enclosed, locked facility. *Id.*, (slip op at 6-7). Thus, because the defendant failed to comply with the requirement that he keep the marihuana in an enclosed, locked facility, he was subject to prosecution, and the trial court abused its discretion in dismissing the charges. *Id.*, (slip op at 7).”

On the other hand, the dissent “would reverse that portion of the trial court’s March 8 one-sided order precluding defendants’ reference to the MMA or “medical marihuana” at trial.”

People v. Bylsma, Case No. 302762, September 27, 2011 (Michigan Court of Appeals):

Issue: Whether the Defendant can invoke either the immunity provided by Section 4 or to assert the affirmative defense contained in Section 8?

Holding: The court ruled that because Defendant failed to comply with the strict requirements of the Act that each set of 12 plants permitted under the Act to meet medical needs of a specific qualifying patient must be kept in an enclosed, locked facility that can only be accessed by one individual, he was not entitled to invoke either the immunity provided by Section 4 or to assert the affirmative defense contained in Section 8.

The Defendant was a single lessor of property located in a commercial building. Pursuant to a search warrant at this building leased by the Defendant, the police obtained approximately 86-88 plants. The Defendant was a registered primary caregiver under the Act for 2 qualifying patients.

The Court held that the Defendant failed to demonstrate that he was allowed to have access to marijuana plants designated for qualifying patients other than the 2 he was linked through the Michigan Department of Community Health.

Therefore, because Defendant failed to comply with the strict requirements of the Act that each set of 12 plants permitted under the Act to meet medical needs of a specific qualifying patient must be kept in an enclosed, locked facility that can only be accessed by one individual, he was not entitled to invoke either the immunity provided by Section 4 or to assert the affirmative defense contained in Section 8.

People v. Brian Bebout Reed, Case No. 296686, August 30, 2011 (Michigan Court of Appeals):

Issue: For a Section 8 affirmative defense to apply, does the physician statement have to occur before the purportedly illegal conduct?

Holding: The Court held as follows: "We stated in *People v Kolanek*, ___ Mich App ___, ___ NW2d ___, 2011 WL 92996 (2011), lv granted 489 Mich 956; 798 NW2d 509 (2011), slip op at 7, that the relevant deadline for obtaining the physician's statement required to establish the affirmative defense in MCL 333.26428 was the time of a defendant's arrest.

We now extend that ruling and hold that, for the affirmative defense to apply, the physician's statement must occur before the commission of the purported offense. We further hold that defendant has no immunity under MCL 333.26424 because defendant did not possess a registry identification card at the time of the purported offense."

In essence, “In light of the above-considerations, we hold that, for a Section 8 affirmative defense to apply, the physician’s statement must occur before the purportedly illegal conduct.”

In this case, the Defendant’s marihuana plants were discovered before any physician authorization, but defendant was not arrested until after he had obtained physician authorization, as well as a registry identification card from the Michigan Department of Community Health (MDCH). See MCL 333.26424.

Because the Defendant’s Motion to Dismiss was denied, the Court stated that “No reasonable jury could find that defendant is entitled to the Section 8 defense, and thus defendant is barred from asserting it at trial.”

State of Michigan v. Brandon McQueen, Case No. 301951, August 23, 2011
(Michigan Court of Appeals):

Issue: Whether the “medical use” of marihuana includes patient-to-patient “sales” of marihuana under the Act?

Holding: The “medical use” of marihuana does not include patient-to-patient “sales” of marihuana, and neither Section 4(e) nor 4(k) permits the sale of marihuana. Defendants, therefore, have no authority under the MMMA to operate a marihuana dispensary that actively engages in and carries out patient-to-patient sales of marihuana. Accordingly, defendants’ operation of Compassionate Apothecary (CA) is not in accordance with the provisions of the MMMA.

The dispensary (an LLC) was a place where its members (who were either registered qualifying patients or their primary caregivers) purchased marihuana that other members stored in their lockers rented from the LLC. Via operation of the LLC, defendants provided the mechanism for the sale of marihuana and retained at least 20% of the sale price.

Plaintiff, through the county prosecuting attorney, sued defendants for injunctive relief, asserting that their operation of the LLC was not in accordance with the MMMA's provisions and thus, was a public nuisance because it violated the Public Health Code (PHC). The trial court ruled that defendants operated the LLC in accordance with the MMMA's provisions.

Defendants argued the LLC's operation complied with the MMMA because medical use of marihuana includes its "delivery" and "transfer," and patients engaged in the medical use of marihuana when they transferred it to other patients

The court concluded that the trial court erred in its factual findings that (1) it was the LLC's members, who rented the lockers, and not defendants, who possessed the marihuana stored in the lockers and (2) defendants did not sell the marihuana, but only "facilitated its transfer from patients to patients." The court held that the defendants possessed the marihuana stored in the lockers and were full participants in the selling of marihuana.

The court could "not ignore, or view as inadvertent, the omission of the term 'sale' from the definition of the 'medical use'" of marihuana. The court also held that neither §§ 4(e) nor 4(k) permit the sale of marihuana. Further, because defendants were engaged in selling marihuana, which is not the "using or administering" of marihuana, they were not entitled to immunity granted by § 4(i).

Lastly, because they possessed marihuana, and possessed it with the intent to deliver it to the LLC's members, their operation of the LLC violated the PHC. Since the PHC was designed to protect the health, safety, and welfare of the people of Michigan, the public was presumed harmed by defendants' violation of the PHC. The judgment for plaintiff "shall include the entry of any order that may be necessary to abate the nuisance and to enjoin defendants' continuing operation of" the LLC. This opinion is to have immediate effect.

People v. Anderson, Case No. 300641, June 7, 2011 (Michigan Court of Appeals):

Issue: Is a Defendant required to provide expert testimony about the amount of marihuana reasonably necessary for a Defendant's condition?

Holding: No, the court held that expert testimony is not required but can be considered if the testimony is relevant.

Issue: Can a Defendant bring a Michigan Medical Marihuana Act (MMMA) § 8 defense to the jury after losing the motion to dismiss?

Holding: The Court held that a §8 defense can be barred where no reasonable jury could find that the elements of the §8 defense had been met.

Judges Hoekstra and Murray signed the brief per curiam opinion, and Judge Michael J. Kelly filed a concurrence opinion, which was joined in part by the other judges (rendering those parts the unanimous opinion of the court).

The facts of the case is that Anderson was charged in Kalamazoo County of manufacturing marihuana after an officer went to Anderson's home to investigate a possible break-in and discovered some 26 growing marihuana plants. Anderson moved to dismiss under § 8 of the MMMA.

The trial court denied the motion, finding that Anderson had failed to show "that he needed an amount of marihuana in excess of the presumptively reasonable amounts described under § 4 and, with regard to the outdoor plants, failed to show that the plants were in an enclosed locked facility."

The Defendant sought and was granted leave to file an interlocutory appeal, raising two issues.

Regarding the first issue of whether expert testimony was required to sustain Defendant's section 8 defense, Defendant raised a hypothetical issue. The trial court did not rule as a matter of law that Defendant was required to produce expert testimony about the amount of marihuana reasonably necessary for Defendant's condition. Rather, the trial court considered the testimony of defendant and his family physician on the issue of whether defendant possessed a reasonable quantity, but rejected that evidence recognizing that expert testimony would have been relevant. Defendant's assertion that the trial court required him to produce expert testimony was incorrect.

On the second issue of whether the Defendant can bring the Sec 8 defense to the jury after losing his motion to dismiss, the COA ruled that "a trial court may bar a defendant from presenting evidence and arguing a sec 8 defense at trial where, given the undisputed evidence no reasonable jury could find that the elements of the sec 8 defense had been met."

As there was no dispute about the amount of plants Defendant possessed, or that the plants were not kept in a closed locked facility, "no reasonable jury could, therefore, find that he had 12 or fewer plants or that the plants were in an enclosed locked facility." As no reasonable juror could acquit Defendant on the basis of a Sec 8 defense, the trial court did not err by precluding Defendant from presenting the Sec 8 defense at trial.

People v. King, Case No. 294682, February, 3, 2011 (Michigan Court of Appeals):

Issue: Is a Defendant entitled to limited protections of the Michigan Medical Marihuana Act (MMMA) because the Defendant complied with its statutory provisions?

Holding: No, the court held the Defendant must comply with growing provisions of MMMA §4 to meet the requirements of MMMA §8 for a Defendant claiming to be a qualified patient in possession of a registry identification card.

Issue: What is an "enclosed locked facility"?

Holding: The enclosed area itself must have a lock or other security device to prevent access by anyone other than the person licensed to grow marihuana.

The facts of the case are that on May 13, 2009, the Michigan State Police received an anonymous tip that someone was growing marihuana in the backyard of a house. The officers saw a chain-link dog kennel behind the house. Although the sides of the kennel

were covered with black plastic, some areas of the kennel were uncovered and, using binoculars. The officer could see marihuana plants growing inside.

The Defendant, who was at home at the time, showed the officers medical marihuana card that was issued on April 20, 2009. The officers asked him to show them the marihuana plants and he unlocked a chain lock on the kennel. The kennel was six feet tall, but had an open top and was not anchored to the ground. Defendant disclosed that he had more marihuana plants inside the house. After they obtained a search warrant, the officers found marihuana plants growing inside Defendant's unlocked living room closet. Defendant was charged with two counts of manufacturing marihuana.

The Defendant argued that he was entitled to the limited protections of the MMA because he complied with its statutory provisions including meeting the definition of "Enclosed, locked facility." The trial court agreed.

The Court of Appeals disagreed. The Court although Defendant timely raised a § 8 defense, he did not fulfill its requirements. The court further held that clearly, by its reference to § 7, § 8 required Defendant to comply with other applicable sections of the Medical Marihuana Act, which include the growing requirements set forth in § 4. Also, the court held that as a registered cardholder, Defendant must comply with the growing provisions of § 4. Section 4 applied to Defendant because he grew marihuana under a claim that he is a qualifying patient in possession of a registry identification card. The court held that, because he did not comply with § 4, he also failed to meet the requirements of § 8 and thus, he was not entitled to the affirmative defense in § 8 and he was not entitled to dismissal of the charges.

The court also held that the trial court incorrectly interpreted and applied the phrase "Enclosed, locked facility." The court further held that, although the plants inside Defendant's home were kept in a closet, which is the type of enclosure specifically mentioned in the statute, there was no lock on the closet door. The statute explicitly states that the enclosed area itself must have a lock or other security device to prevent access by anyone other than the person licensed to grow marihuana under the MMA.

Lastly, the court noted that the "Trial court's conclusion that Defendant acted as a "security device" for the marihuana growing inside his home is pure sophistry and belied by defense counsel's unsurprising admission at oral argument that, at times, Defendant left the property, thus leaving the marihuana without a "security device" and accessible to someone other than Defendant as the registered patient."

People v. Kolanek, Case No. 295125, January 11, 2011 (Michigan Court of Appeals):

Issue: Can a physician's approval for a patient's use of medical marihuana act as a defense for an arrest that occurred before the approval?

Holding: No, the court held that the physician's opinion regarding a medical marihuana applicant has to occur prior to the arrest.

This case required the Michigan Court of Appeals to consider an issue of first impression involving the interpretation of the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, namely when a physician must provide the statement required under MCL 333.26428(a)(1).

On April 6, 2009, Defendant was involved in an altercation that ultimately resulted in a search of Defendant's vehicle and the seizure of eight marihuana cigarettes from the trunk of Defendant's vehicle. On April 7, 2009, Defendant was charged with possession of marihuana. Defendant offered the testimony of Dr. Ray Breitenbach. Dr. Breitenbach testified that he and Defendant had previously discussed the potential for Defendant to use medical marihuana, but that Defendant did not make his actual request until April 12, 2009. It should be noted that when Defendant finally made the request of Breitenbach in April 2009, he did not inform Breitenbach that he had been arrested and charged with possession of marihuana.

On June 9, 2009, Defendant completed an affidavit in support of his assertion of the MMMA for the purpose of his affirmative defense and motion to dismiss. He stated that he uses marihuana for chronic pain and nausea caused by the Lyme disease. Also on June 9, 2009, Defendant prepared an affidavit of qualifying patient, indicating that he was a patient qualifying for the medical use of marihuana. He also provided his application form for registering for a medical marihuana card, which he prepared on April 12, 2009. The Michigan Department of Community Health issued him a certification card two weeks later.

Defendant maintained that he did not register for medical marihuana use certification before April 12, 2009, because the application form was not available online until April 8, 2009, two days after his arrest.

The issue before the Court of Appeals is when does a physician have to provide his professional opinion under MCL 333.26428(a)(1) in order for a Defendant to assert the § 8 affirmative defense.

Based on the Court's interpretation of MCL 333.26428(a)(1), that "[a] physician *has stated*" the medical benefit to the patient, the Court held that "*has stated*" requires that the physician's opinion occur prior to arrest.

The Court reasoned that "The term is past tense, the initiative must have intended that the physician's opinion be stated prior in time to some event. That event would reasonably be 'any prosecution involving marihuana,' MCL 333.26428(a), for which the defense is being presented. Thus, because the arrest begins the prosecution, the physician's opinion must occur prior to the arrest."

The Court relied on two out of state cases for its reasoning. *People v Rico*, 69 Cal App 4th 409, 414-415; 81 Cal Rptr 2d 624 (1999) (Holding that "post-arrest approval is insufficient to allow application of the compassionate use statute" because "[t]o sanction the use of marihuana under the facts presented herein would encourage the use of marihuana for any idiosyncratic problem, whether medically valid or not, with an ensuing attempt to seek medical approval after an arrest intervened."); *Oregon v Root*, 202 Ore App 491, 493-494; 123 P3d 281 (2005) (The Oregon Court of Appeals looked at the text and context of the statute and determined that the intent was that "the doctor's advice must come *before* a citizen is free to use marihuana without fear of civil or criminal penalties" based on the past tense language requiring that a Defendant "has . . . been advised." *Id.* at 495-497).

However, it should be noted that in the last paragraph of the Court's opinion, the Court stated that "As the statute does not provide that the failure to bring, or to win, a pre-trial motion to dismiss deprives the Defendant of the statutory defense before the factfinder, Defendant's failure to provide sufficient proofs pursuant to his motion to dismiss does not bar him from asserting the Section 8 defense at trial nor from submitting additional proofs in support of the defense at that time."

Editor's Note: Please note the California case is *People v. Rigo*, 69 Cal App 4th 409, 414-415; 81 Cal Rptr 2d 624 (1999), not *People v. Rico* as stated in the opinion.

People v. Redden, Case No. 295809, September 14, 2010 (Michigan Court of Appeals):

Issue: Can Defendants use the affirmative defense contained in §8 of the Michigan Medical Marihuana Act (MMMA), MCL 333.26428, if their registry identification card was acquired after the offense?

Holding: Yes, the court held that registered patients under §4 and unregistered patients under §8 would be able to assert medical use of marihuana as a defense even though the defendant does not satisfy the registry identification card requirement of §4.

Issue: What constitutes a physician-patient relationship?

Holding: The doctor's recommendations have to result from assessments made in the course of bona fide physician-patient relationships and the Defendants have to see the physician for good-faith medical treatment not in order to obtain marihuana under false pretenses.

Defendant Robert Lee Redden and Defendant Torey Alison Clark appealed by leave granted from a December 10, 2009, circuit court order reversing for each Defendant the district court's dismissal of a single count of manufacturing 20 or more but less than 200 marihuana plants.

This case arose from the execution of a search warrant on March 30, 2009, at Defendants' residence, which resulted in the discovery of approximately one and one-half ounces of marihuana and 21 marihuana plants. Defendants were in the residence at the time of the search. The officers found 3 bags of marihuana in a bedroom and 21 marihuana plants on the floor of the closet in the same bedroom.

It should be noted that although the MMMA went into effect on December 4, 2008, the State of Michigan did not begin issuing registry identification cards until April 4, 2009. The Michigan Department of Community Health issued medical marihuana registry identification cards to each Defendant on April 20, 2009.

As part of the preliminary examination, Defendants asserted the affirmative defense contained in § 8 of the MMMA, MCL 333.26428. In support of the defense, Defendants presented testimony from Dr. Eric Eisenbud, M.D., licensed to practice in the State of Michigan. Dr. Eisenbud testified that Defendants were his patients and he examined each of them on March 3, 2009, when both were seeking to be permitted to use medical marihuana under the MMMA.

Dr. Eisenbud testified that he signed the authorization for each Defendant in his professional capacity because each qualified under the MMMA and each would benefit from using medical marihuana. He opined that his relationship with each Defendant was a bona fide physician-patient relationship because he interviewed Defendants, examined them, and looked at their medical records in order to gain a full understanding of their medical problems.

The prosecution has argued throughout each stage of the judicial process that Defendants were not entitled to assert the affirmative defense from § 8 of the MMMA because they did not each have a registry identification card at the time of the offense as required by § 4(a) of the MMMA, MCL 333.26424(a).

On the other hand, the Defendants argued that they each met the requirements of § 8 because they each had a signed authorization from a licensed physician with whom they had a bona fide physician-patient relationship and who concluded that they each had conditions covered under the MMMA. Defendants also argued that the amount of marihuana was reasonably necessary.

The Court noted that "Individuals may either register and obtain a registry identification card under § 4 or remain unregistered and, if facing criminal prosecution, be forced to assert the affirmative defense in § 8. The Court stated "That adherence to § 4 provides

protection that differs from that of § 8. Because of the differing levels of protection in sections 4 and 8, the plain language of the statute establishes that § 8 is applicable for a patient who does not satisfy § 4."

The Court also mentioned the ballot proposal language, specifically, the following language:

- Permit registered and unregistered patients and primary caregivers to assert medical reasons for using marihuana as a defense to any prosecution involving marihuana.

Based on this language, the Court ruled that "The language supports the view that registered patients under § 4 and unregistered patients under § 8 would be able to assert medical use of marihuana as a defense."

Therefore, the Court held that the district court did not err by permitting Defendants to raise the affirmative defense even though neither satisfied the registry-identification-card requirement of § 4.

The next issue is whether there was a bona fide physician-patient relationship. The Court stated that "We find that there was evidence in this particular case that the doctor's recommendations did not result from assessments made in the course of bona fide physician-patient relationships. The Court ruled that "The facts at least raise an inference that Defendants saw Dr. Eisenbud not for good-faith medical treatment but in order to obtain marihuana under false pretenses."

The circuit court's decision to reverse the district court's bindover was affirmed.

People v. Campbell, Case No. 291345, July 13, 2010, approved for publication, August 26, 2010 (Michigan Court of Appeals):

Issue: Should the Michigan Medical Marihuana Act (MMMA) be retroactively applied?

Holding: The court held that the MMMA should not be retroactively applied.

Defendant was charged with manufacture of marihuana, MCL 333.7401(2)(d)(iii), possession with intent to deliver marihuana, MCL 333.7401(2)(d)(iii), possession of a firearm during the commission of a felony (two counts), MCL 750.227b, and misdemeanor possession of marihuana, MCL 333.7403(2)(d). The trial court granted Defendant's motion to dismiss after concluding that the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 et seq., should be retroactively applied. Plaintiff appealed as of right.

The charges against Defendant resulted from a search, pursuant to a warrant, of his home and vehicle on December 3, 2007. Nine marihuana plants, two bags of dried marihuana, and assorted drug paraphernalia were discovered in the search. A shotgun was also recovered from Defendant's home. Defendant stated to the police who executed the

warrant that the marihuana was for medicinal use. While Defendant's criminal charges were pending, the MMMA was enacted and became effective on December 4, 2008.

Defendant moved to dismiss the charges against him based on the MMMA, which provides an affirmative defense for a criminal Defendant facing marihuana-related charges. MCL 333.26428(a). The trial court granted Defendant's motion, despite the prosecutor's assertion that Defendant was not entitled to the defense because his arrest occurred before the MMMA became effective.

The sole issue on appeal was whether the MMMA should be retroactively applied. A trial court's decision on a motion to dismiss is reviewed for an abuse of discretion.

Generally, statutes are presumed to operate prospectively unless the Legislature either expressly or impliedly indicates an intention to give the statute retroactive effect. *People v Conyer*, 281 Mich App 526, 529; 762 NW2d 198 (2008).

The Court rejected Defendant's argument that MCL 333.26428(a) was subject to retroactive application because there is an indication that the Legislature intended such. The sections of the MMMA that Defendant relies on to support this position, specifically MCL 333.26425 and MCL 333.26429, do not relate to whether the provision should be retroactively or prospectively applied. Instead, those sections provide a timeline for actions to be taken by the Department of Community Health to implement the registered user provisions of the MMMA, as well as a self-executing alternative if the department fails to take the necessary actions within the specified timeline.

The case was reversed and remanded for reinstatement of the charges against Defendant.

MICHIGAN COURT OF APPEALS DECISIONS

UNPUBLISHED CASES

People v. Eric Watkins and Gary Watkins, Case Nos. 302558, 302559, August 11, 2011 (Michigan Court of Appeals):

Issue: Whether the trial court err when it granted the prosecution's motion in limine to the extent that it precluded both defendants from asserting or presenting evidence in support of the immunity stated under Section 4 or the defense under Section 8 of the MMA?

Holding: The trial court did not err when it granted the prosecution's motion in limine to the extent that it precluded both defendants from asserting or presenting evidence in support of the immunity stated under § 4 or the defense provided under § 8 of the MMA.

Defendant, Eric Watkins maintains that the trial court's order improperly bars him from presenting evidence that he thought that his father, Gary Watkins, was legally growing marihuana because he was a registered patient under the MMA.

As previously noted, the prosecutor moved in limine to preclude defendants from referring to the MMA as a defense on the basis of the trial court's rulings on the defense motions. The trial court granted the prosecution's motion. Because Gary Watkins could not properly raise such a defense, Eric Watkins could not raise the defense that he was merely in his father's presence as a qualified user under the MMA. Specifically, the trial court stated that it was precluding "both defendants from referencing the MMA as a defense."

The Court of Appeals noted that "And, the fact that Eric might have acted under a mistaken belief as to the legality of his actions is no defense under Michigan law because ignorance or mistake of law cannot normally serve as a defense to a criminal prosecution."

"As such, Eric Watkins might properly be excluded from admitting evidence concerning the MMA in an effort to show that, although he otherwise possessed or manufactured the marihuana at issue, his acts should be excused because he reasonably—albeit mistakenly—believed that what he was doing was lawful under the MMA."

People v. Eric Watkins and Gary Watkins, Case No. 301771, June 21, 2011 (Michigan Court of Appeals):

Issue: Whether the trial court erred in denying the defendants' request for an evidentiary hearing to suppress the search warrant as related to entry on the premises?

Holding: The trial court erred in denying defendants' request for an evidentiary hearing and we vacate the court's orders denying defendants' motions to suppress and remand for an evidentiary hearing on the motions.

Issue: Whether the trial court erred in denying co-Defendant, Gary Watkins' motion for an evidentiary hearing under the MMMA?

Holding: Co-Defendant, Gary Watkins, was required to establish his compliance with the "enclosed, locked facility" requirement of MCL 333.26424(a), even though he was asserting a defense under section 8. It is abundantly clear from the preliminary examination testimony that he did not meet that requirement.

According to the preliminary examination testimony, when Novi Police Officer Jeff Brown entered the home, Eric and his fiancé were sitting in the dining room. Numerous marihuana plants were out in the open in various rooms of the house, including the sun room, family room, furnace room, and the bedrooms, as well as in a plastic greenhouse in the backyard.

The sun room was directly behind the dining room where Eric and his fiancé were sitting. Officer Brown testified that the plants in that room were not locked up in any way and were in plain view from outside of the sun room. There were plants in the family room that were not hidden in any way. There were also plants growing inside a hallway closet with no door or drapes. The plants were visible from outside the closet. The plants in the backyard were in a "plastic zipper style greenhouse" with no lock. This manner of storage clearly does not meet the "enclosed, locked facility" requirement.

People v. Carroll, Case No. 297541, May 31, 2011 (Michigan Court of Appeals):

Issue: Can the Michigan Medical Marihuana Act (MMMA) be retroactively applied?

Holding: The court followed *Campbell* which found the statute did not apply retroactively.

The Court held that the trial court erred by dismissing two charges against the defendant (possession with intent to deliver less than 5 kilograms or fewer than 20 plants of marihuana and felony-firearm) based on the conclusion that the MMA applies retroactively

The Court stated that "The *Campbell* court's decision is binding precedent and is consistent with prior Michigan jurisprudence regarding statutory construction." The general rule . . . is that a new or amended statute applies prospectively unless the Legislature has expressly or impliedly indicated its intention to give it retrospective effect."

People v. Walburg, Case No. 295497, February 11, 2011 (Michigan Court of Appeals):

Issue: Can a Defendant use an affidavit from a physician acquired after the Defendant's arrest?

Holding: The court followed *Kolanek*, and found that the physician's opinion regarding a medical marihuana applicant has to occur prior to the arrest.

The Defendant claimed that he used the marihuana to treat a severe anxiety disorder and insomnia and did obtain an affidavit from a physician, after his arrest. The trial court dismissed the Defendant's case pursuant Section 8 of the Act.

Following the rationale of *People v. Kolanek*, the Court of Appeals reinstated the charges.

People v. Malik, Case No. 293397, August 10, 2010 (Michigan Court of Appeals):

Issue: Can a Defendant be criminalized for the operation of a motor vehicle while having any amount of a schedule 1 controlled substance in his or her body, regardless of whether that individual has exhibited signs of impairment? Is the Medical Marihuana Act retroactive?

Holding: Yes, the court held that while evidence of a positive test for 11-Carboxy-THC is inadmissible, evidence of the presence of tetrahydrocannabinol (THC) in a Defendant's system is still relevant in determining whether the Defendant was operating the vehicle while intoxicated. The Court rejected the application of the Medical Marihuana Act retroactively.

The prosecution presented only one issue on appeal, arguing that the trial court erroneously invalidated MCL 257.625(8) on due process grounds in contravention of the Supreme Court's decision in *People v. Derror*, 475 Mich 316; 715 NW2d 822 (2006).

On October 17, 2008, Defendant's automobile collided with the victim's motorcycle. Defendant's blood test revealed four nanograms of parent tetrahydrocannabinol (THC), and 15 nanograms of 11- carboxy-THC. Defendant was charged, as an habitual offender, second offense, MCL 769.10, with operating a vehicle while intoxicated and causing death, MCL 257.625(4)(a), operating a vehicle with a suspended or revoked license and causing death, MCL 257.904(4), and negligent homicide, MCL 750.324.

In order to secure a conviction for violation of MCL 257.625(4)(a), the prosecution sought to prove that Defendant violated MCL 257.625(8). MCL 257.625(8), which criminalizes the operation of a motor vehicle by an individual who has any amount of a schedule I controlled substance in his or her body, regardless of whether that individual has exhibited signs of impairment.

It should be noted that MCL 333.7211 provides a general definition of schedule 1 controlled substances, while MCL 333.7212 designates specific substances as schedule 1 controlled substances. THC is one such schedule 1 controlled substance.

Defendant filed a number of pretrial motions, including a challenge to the constitutionality of MCL 257.625(4). The Barry County Circuit Court ruled that “MCL 257.625(8) is fundamentally unfair, does nothing to promote public safety, and bears no rational relationship to any legitimate governmental interest,” and it invalidated MCL 257.625(8) on due process grounds.

In an unpublished opinion, the Court of Appeals reversed and remanded. The Court ruled as follows:

“Defendant has not alleged that it is unconstitutional to criminalize operating a motor vehicle while under the influence of THC. Consequently, we hold that the trial court’s ruling regarding the constitutionality of MCL 333.7212 must be reversed and this matter is remanded for trial. At trial, the evidence of the positive test for 11-carboxy-THC is inadmissible as it is now irrelevant. However, the evidence of the presence of THC in Defendant’s system is still relevant in determining whether he was operating his motor vehicle while intoxicated.”

Lastly, the Court rejected the argument about the Michigan Medical Marihuana Act being applicable and retroactive under *People v Conyer*, 281 Mich App 526 (2008).

People v. Peters, Case No. 288219, January 21, 2010 (Michigan Court of Appeals):

Issue: Was the Michigan Medical Marihuana Act (MMMA) meant to be retroactively applied?

Holding: No, the court held that it is unlikely that the Legislature intended the act to be retroactive to a date prior to its effective date when the policies and procedures regarding identifying qualifying medical conditions and processing applications for registration cards were not even established.

In its first medical marihuana decision, the Michigan Court of Appeals ruled as follows:

“The MMMA clearly indicates that its effective date is December 4, 2008, and there is nothing included in the act to indicate that it was intended to be effective sooner than that date. Moreover, it is unlikely that the Legislature intended the act to be retroactive to a date prior to its effective date when the policies and procedures regarding identifying qualifying medical conditions and processing applications for registration cards were not even established. See MCL 333.26425(a), (b).”

MICHIGAN LOWER COURT DECISIONS

CIRCUIT COURT DECISIONS

People v. Ferretti, 2011-798-AR, September 27, 2011 (Macomb County):

In this case, in pertinent part, the People argued that the lower court erred in quashing the search warrant, suppressing the fruits of the searches, and dismissing the charges. According to the People, the search warrant affidavit set forth probable cause and the new information did not materially change or cast doubt on the existence of probable cause.

Specifically, the People asserted the fact that defendants produced medical marihuana cards is not material to the decision of probable cause and does not alter the alleged crime, or scope or nature of the resulting search. Further, the People maintained possession of a medical marihuana card is only an affirmative defense with no legal bearing on the decision to issue a search warrant or probable cause that a violation of the Public Health Code occurred.

In response, defendants claimed the lower court properly quashed the search warrant because the police officers failed to update the issuing district court with highly relevant, newly discovered evidence before executing the warrant. Defendants asserted the new information regarding defendants' possession of medial marihuana cards was a material fact that cast doubt on the decision of probable cause. Defendants maintained it is presumed that medical marihuana card holders are conforming with the act and this alters the information provided in the search warrant affidavit.

Issue: Whether the lower court erred in quashing the search warrant, suppressing the fruits of the searches, and dismissing the charges,

Holding: The Court held that “In this matter, the new information would not affect the finding of probable cause. The only new information to be added to the affidavit is that defendants possess medical marihuana cards.”

The new information did not affect the veracity of the statements made in the affidavit including the confidential informant's statements regarding a large grow operation and the selling of marihuana; information from DTE Energy that the residence had two energy meters and a very large increase in energy/electricity had been used on both meters as compared to the last two years for the same period of time; evidence from a non-intrusive thermal imaging search that there were detectable heat anomalies consistent with indoor marihuana manufacturing; and, based on surveillance of the residence, the roof of the living portion of the residence was not snow-covered even though the garage and other residences in the area had snow-covered roofs.

Further, the new information does not alter the alleged crime, or the scope or nature of the resulting search. Even with the supplemental information, the affidavit clearly establishes, by a fair probability, that evidence of a large marihuana grow operation would be discovered at the 28 Mile Road address.

Beek v. City of Wyoming, 10-11515-CZ, September 1, 2011 (Kent County):

The plaintiff, John Beek requested an injunction prohibiting the City of Wyoming from enforcing the following ordinance:

“Uses not expressly permitted under this article are prohibited in all districts. Uses that are contrary to federal law, state law or local ordinance are prohibited.”

Issue: Whether the Plaintiff’s Request for Injunctive Relief should be denied?

Holding: The Kent County Circuit Court was persuaded by analysis in the Oregon Supreme Court case of *Emerald Steel Fabricators, Inc v. Bureau of Labor and Industries*, 328 Or 159, 175-178, 230 P3d 518, 527-529 (2010). In *Emerald Steel*, supra, the Oregon Court Supreme Court ruled that “a provision of the Oregon Medical Marihuana Act affirmatively authorizing the use of medical marihuana was preempted by Federal Controlled Substances Act, which explicitly prohibited marihuana use without regard to medicinal purpose.”

The Kent County Court relying on *Emerald Steel*, supra, stated that “This prohibition on the use of marihuana exists because Congress recognizes no accepted medical use for marihuana.”

The Court further stated that “Here, the MMMA recognizes medical uses for marihuana even though these uses are illegitimate under the Controlled Substances Act, 21 USC Section 801 et seq. This means that the MMMA stands as an obstacle to the implementation and execution of the full purposes and objectives of the Controlled Substances Act.” ... In sum, it is indisputable that state medical-marihuana laws do not, and cannot, supersede federal laws that criminalize the possession of marihuana.”

People v. Salerno, 10-234766-FH, August 18, 2011 (Oakland County):

Issue: Whether the defendant is entitled to assert the affirmative defense under Section 8 of the MMMA?

Holding: The Court found that Defendant cannot assert the affirmative defense under Section 8 for several reasons.

The defendant stated he had sold 30 to 50 times in the two prior years. He was selling it between \$350.00 and \$450.00 per ounces. Clearly, defendant was not in possession of marihuana for his medical needs.

Additionally, it cannot be reasonably argued that Defendant needed 140.1 grams to treat himself for his diabetic condition. Lastly, the Doctor was lacking any knowledge as to the amount of marihuana the defendant should be taking to alleviate his symptoms.

People v. Vlasenko, 11-236616-FH, August 17, 2011 (Oakland County):

Issue: Whether caregivers can only sell to individuals to whom they are linked or connected through the Department's registration process?

Holding: There is no language under the MMMA that provides protection from prosecution to medical marihuana dispensaries.

The Court noted that the plain language of the provisions of Section 8 clearly evidences the intent of a relationship between patient and caregiver, not the dispensing of marihuana to the world at large. In this case, the Defendant is a business selling marihuana to anyone who walked in the door and paid a membership fee.

People v. Rowe, 10-234689-FH, August 3, 2011 (Oakland County):

Issue: Whether in order to assert the affirmative defense under Section 8 the Defendant must show he met the formal requirements under Section 4, including that the plants were kept in an enclosed, locked facility?

Holding: Relying on the Court of Appeals decision, *People v. King*, the type of facility at issue in this case did not satisfy the definition of enclosed, locked facility under the Act. As such, the Court found that no reasonable juror could find that the Defendant was growing his marihuana in an enclosed, locked facility as defined in the Act.

The "facility" within which Mr. Rowe was growing his plants was accessible to anyone who entered the back yard, and there were no locks or other security devices which prohibited access to anyone other than the registered patients. The Officer testified that a person could easily reach over the top of the fence and reach the plants.

Lotts v. City of Livonia, 10-013917-CZ, July 22, 2011 (Wayne County):

Issue: Whether the City of Livonia's Motion for Summary Disposition should be granted?

Holding: The Court ruled that Livonia's ordinance directly conflicts with and is preempted by the MMMA, which regulates the use, distribution, and maintenance of medical marihuana and occupies the field of regulation. However, the MMMA is

also preempted by the Federal Controlled Substance Act (CSA), which completely bans the use of marihuana and bans its use by physicians for a medical purpose. Therefore, Plaintiffs have failed to state a claim for which relief can be granted.

It should be noted that the Lotts sued the City of Livonia claiming that the Livonia zoning ordinance placed them in danger of prosecution for the use of medical marihuana approved by the MMMA.

The City of Livonia ordinance stated that "Uses not expressly permitted are prohibited. Uses for enterprises that are contrary to federal, state, or local laws or ordinances are prohibited."

People v. Shounevia, 2010-234797-FH, June 17, 2011 (Oakland County):

Issue: Whether the marihuana plants found in Defendant's home were in an "enclosed, locked facility."

Holding: The Court ruled that the marihuana plants were not in an enclosed locked facility.

Issue: Whether Defendant Whether Defendant's expert, Dr. Irwin Lutwin was qualified under MRE 702.

Holding: The court ruled that Dr. Lutwin was not qualified as an expert under MRE 702 because he fails to demonstrate scant knowledge concerning medical marihuana, let alone its use to treat or alleviate serious or debilitating medical conditions or symptoms.

Defendant asserted an affirmative defense under Section 8 of the Act.

The Court decided two issues:

1. Whether the marihuana plants found in Defendant's home were in an "enclosed, locked facility."
2. Whether Defendant Whether Defendant's expert, Dr. Irwin Lutwin was qualified under MRE 702.

The Judge ruled that the plants were not in an "enclosed, locked facility," and that Dr. Lutwin was not qualified as an expert under MRE 702.

The Court noted on page of the attached opinion that "while Dr. Lutwin has been a medical doctor and seen thousands of patients over the years for serious debilitating conditions, he fails to demonstrate scant knowledge concerning medical marihuana, let alone its use to treat or alleviate serious or debilitating medical conditions or symptoms."

Therefore, the Judge denied the Motion, and further stated that the Defendant cannot assert the MMMA affirmative defense at trial.

People v. Finney & Wert, Case No. 2009-408-FH, June 8, 2011 (Midland County):

Issue: Are Defendants allowed to use medical marihuana while on probation?

Holding: The Court ruled that the two probationers/defendants are not allowed the use of medical marihuana while on probation.

What is particularly interesting in the opinion is that the Judge declares the MMMA to be "without effect." The reasoning for this declaration can be found in the opinion from pages 20-26.

People v. Larry Craft, Case No. 2011-4399-FH, May 10, 2011 (Antrim County):

Holding: Pursuant to the People's Motion in Limine, the Court precluded any defense under the Michigan Medical Marihuana Act. The Court was not satisfied the Defendant established any showing in order to present his medical marihuana registration card in Court and testify regarding his qualifications under the Michigan Medical Marihuana Act.

People v. Buthia, Case No. 2010-4199-FH, April 12, 2011 (Macomb County):

Issue: Whether a Defendant can use medical marihuana while on probation.

Holding: Court ordered that the defendant's motion for the use of medical marihuana while on probation is DENIED.

The Defendant filed a motion for the use of medical marihuana while on probation. The Prosecutor filed a response seeking denial of the motion.

Court order that the defendant's motion for the use of medical marihuana while on probation is DENIED.

State of Michigan v. MacDonald, et. al., Case No. 2011-003968-CZ, March 24, 2011 (Alpena County):

Issue: Determining the legality of patient-to-patient sales of medical marihuana in the Defendant's business.

Holding: The court ruled that the Defendants' business does not fall within the protections of the MMMA, given that they admittedly served some 60 patients, rather than the 10 that they can assist as caregivers under the MMMA.

The matter came before the Court on the Prosecutor's Motion for injunctive relief against Defendants and the business they operate. The case came down to the legality of patient-to-patient sales of medical marihuana. The Court granted the injunction.

The Court ruled, in pertinent part, as follows:

"Given the foregoing analysis, it is clear that Defendants' business does not fall within the protections of the MMMA. Although it is not exactly clear how many marihuana plants each Defendant has access to (and whether either of them has access to more than the limit allowed for an individual caregiver), it is at the least clear that "The Health Center" engages in prohibited patient-to-patient sales given that they admittedly serve some 60 patients, rather than the 10 that they can assist as caregivers under the MMMA. As a result, their business as presently organized is a public nuisance by definition pursuant to MCL 600.3801 and the Court must ENJOIN continued patient-to-patient sales of medical marihuana."

People v. Hicks, Case No. 2010-232705-FH, March 15, 2011 (Oakland County):

Issue: Whether the defendant demonstrated a legitimate need for medical marihuana use.

Holding: The court found that the defendant failed to demonstrate that a full assessment of his medical history and current condition were conducted or that he had a bona fide relationship with the doctor. Also, the court found that the defendant was not diagnosed with a serious or debilitating condition and defendant failed to prove that the amount of marihuana that he possessed was legitimate.

People v. Prell, Case No. 2010-233008-FH, March 4, 2011 (Oakland County):

Issue: Can a Defendant assert an MMMA defense when the Defendant's expert witness is not qualified under *Daubert* MRE 702?

Holding: The Court found that Defendant was precluded from asserting MMMA defense. Essentially, Defendant had failed to demonstrate the necessary predicate for the testimony of her expert; namely, that her expert was qualified to render an opinion.

A circuit court opinion denied Defendant's motion to dismiss because her doctor was not qualified under *Daubert*/MRE 702.

More specifically, the Court found that Defendant was precluded from asserting MMMA defense. Essentially, Defendant had failed to demonstrate the necessary predicate for the testimony of her expert; namely, that her expert was qualified to render an opinion concerning Defendant use of marihuana for her medical condition.

The Defendant relied on the testimony of Dr. Moscovic for his professional opinion concerning the medical use of marihuana by the Defendant. On the other hand, the People argued that the Defendant had failed to establish the expertise of the physician pursuant to MRE 702. The Defendant contended that Dr. Moscovic is a "pain specialist" and had "extensive expertise in pain management." The Court noted that there is no evidence to support these assertions.

The Court stated that there was no evidence of any formal training or certification regarding Dr. Moscovic's expertise as a pain specialist or that he had extensive expertise in pain management.

Therefore, the Court found that the Defendant had not met her burden in demonstrating that her expert was qualified to render an opinion in this matter. The Court also noted the opinion rendered by the doctor was not derived from reliable data.

People v. Agro, Case No. 10-233920-FH, February 24, 2011 (Oakland County):

Issue: Whether the Defendant's home qualifies as an enclosed, locked facility.

Holding: The court held that the Defendant could not demonstrate that the house was inaccessible to anyone other than licensed growers or qualifying patients.

The Defendant argued that her home qualified as an enclosed, locked facility. The Court disagreed. The Defendant failed to explain how an entire house was of the same kind of character as a closet or room. Even if Defendant's house fell within the definition of an enclosed, locked facility, Defendant could not demonstrate that the house was inaccessible to anyone other than licensed growers or qualifying patients.

The police officer who executed the warrant testified that the front door was not locked. In addition, Defendant testified that her children and grand-children were allowed in the home. Therefore, because there was no question of fact that Defendant's home was accessible by persons other than qualifying patients or caregivers, she failed to demonstrate that her home was an enclosed, locked facility within the meaning of MCL 333.26424(a).

Defendant also could not demonstrate that the basement where she grew and stored her marihuana was an enclosed, locked facility. It was undisputed that the police found marihuana plants in Defendant's basement where her home was searched. Both Defendant and the officer testified that there was no door on the stairs to the basement.

According to the Defendant, she placed a locked "baby gate" barrier on the stairs, but she failed to explain how the gates permitted access only by registered caregivers or qualifying patients. Therefore, the Defendant failed to demonstrate that the marihuana in her basement was in an enclosed, locked facility as required by MMMA.

Note, on March 31, 2011, the Court of Appeals order "That the application for leave to appeal is denied for failure to persuade the Court of the need for immediate appellate review."

People v. Whitburn, Case No. 10-1641-FH, February 8, 2011 (Alcona County):

Issue: Can a court bar a Defendant from offering or introducing any evidence, testimony, remarks, questions or arguments, either directly or indirectly, relating to the Michigan Medical Marihuana Act (MMMA)?

Holding: Yes, The Court ruled that in order for the Defendant to raise Section 8 of the Act, the Defendant must have no more than 12 marihuana plants, store those plants in an enclosed, locked facility, and have a valid registration identification card. The Defendant failed to meet those requirements.

The Prosecutor filed a Motion in Limine barring Defendant (and Defendant's counsel of record) from offering or introducing, in the jury's presence, any evidence, testimony, remarks, questions or arguments, either directly or indirectly, relating to the Michigan Medical Marihuana Act, her alleged medical use of Marihuana or any potential defenses relating to the Act.

The Alcona County Circuit Court agreed with the People's argument. The Court ruled that in order for the Defendant to raise Section 8 of the Act, the Defendant must have no more than 12 marihuana plants, store those plants in an enclosed, locked facility, and have a valid registration identification card. The Defendant failed to meet those requirements.

Since these requirements were not met in this case, it was ordered that the Defendant is barred from offering or introducing any evidence, testimony, remarks, questions or arguments, either directly or indirectly, relating to the Michigan Medical Marihuana Act, her alleged medical use of marihuana or any potential defenses relating to the Act.

People v. Ferguson, Jr., Case No. 10-003200-FH, January 27, 2011 (Alpena County):

The issue is whether Defendant can raise the affirmative defense before the jury in light of *People v. Kolanek*, ___ Mich. App. ___ (2011).

Holding: The Court ruled that the statement in *Kolanek* was dictum. The Court noted that the *Kolanek* panel was not squarely presented with the issue. Given the *Kolanek* statement's status as dictum, the Court disagreed absent a more specific statement from an appellate court. Allowing a Defendant to raise Section 8 affirmative defense to the factfinder after the court has already concluded that the Defendant has not met his burden only invites jury nullification of the *a priori* legal

conclusion reached by the court that the Defendant has not satisfied the requirement of the Section 8 affirmative defense.

People v. Chason-Pointer, Case No. -, January 13, 2011 (Genesee County):

Issue: Whether the Defendant marihuana amount exceeded the 2.5-ounce limitation.

Holding: The Court directed a verdict in favor of the Defendant. Although there was 38 ounces of "marihuana," the seeds, stems, and roots of the plant were not separated in order to determine whether the "marihuana" exceeded 2.5 ounces of "usable marihuana."

The Court directed a verdict in favor of the Defendant. Although there was 38 ounces of "marihuana," the seeds, stems, and roots of the plant were not separated in order to determine whether the "marihuana" exceeded 2.5 ounces of "usable marihuana."

The Prosecutor argued there was enough marihuana to infer Defendant exceeded the 2.5 ounce limitation. The judge disagreed, saying the Prosecutor was asking the jury to speculate as to the weight of the "usable marihuana" as defined under the Act.

People v. Andrew Nater, Case No. 10-234179-FH, January 12, 2011 (Oakland County):

Issue: Whether patient-to-patient sale of marihuana is illegal.

Holding: The Court ruled that a sale between two MMMA patients who are not connected via the MDCH registration process is illegal and not protected under the MMMA.

People v. Toth, Case No. 10-05-9404-FH, January 5, 2011 (Branch County):

Issue: Whether the Defendant can assert the affirmative defense contained in Section 8?

Holding: The Court ruled that although an inference could be made that some of marihuana was being manufactured for medical purpose, there was no explicit testimony to this fact. The Defendant admitted to the Michigan State Police that his intent was to make money from his grow operation of 163 plants. He was not entitled to assert the affirmative defense contained in Section 8.

The Michigan State Police received an anonymous tip reference to an outside grow of marihuana. One hundred and sixty three (163) marihuana plants were located on the Defendant's property. The Defendant moved to have the case dismissed pursuant to Section 8 of the Act.

The Court ruled that although an inference could be made that some of marihuana was being manufactured for medical purpose, there was no explicit testimony to this fact. The Defendant admitted to the Michigan State Police that his intent was to make money from his grow operation of 163 plants.

People v. Dagit, Case No. 10-870-FH, December 30, 2010 (Ingham County):

Issue: Whether non-caregivers benefit from a section 8 MMMA defense.

Holding: The Court held that "It appears from the language of the statute that the benefits of section 8 of the MMMA, MCL 333.26428, are available only to the patient and the patient's caregiver, Defendant is clearly not a caregiver. While he is a patient, the language of section 8 of the MMMA suggests to this Court that the affirmative defense may be invoked only to the extent that the patient is acting for himself, not for some collective, cooperative, group or patients, or other individual patients."

Therefore, the Court concluded that "defendant's activities appear to have gone well beyond acting for himself."

Please note that on July 22, 2011, the Michigan Court of Appeals ordered the application for leave to appeal is denied for failure to persuade the Court of the need for immediate appellate review.

People v. Koon, 10-28194-AR, November 16, 2010 (Grand Traverse County):

Issue: Does a medical marihuana patient receive standard jury instruction in a case involving impairment?

Holding: The Court ruled that since the Defendant is a registered medical marihuana patient, the Plaintiff (i.e. Prosecutor) is prohibited from using the standard jury instruction indicating that the bodily presence of Schedule I controlled substance is a per se violation of MCL 257.625(8). The MMMA, which supersedes MCL 257.625 *et seq.*, states that qualified patients are proscribed from operating a motor vehicle while under the influence of marihuana. Therefore, evidence of impairment is a necessary requirement... The specific circumstances of this case require evidence of Defendant's impairment."

People v. Eash, Case No. 2010-001034-FH, August 20, 2010 (Berrien County):

Issue: Whether a Defendant can raise an MMMA § 8 defense when the defendant possessed 16 marihuana plants.

Holding: The Court ruled that the Defendant was in possession of 16 plants rather than 12 plants because "The 4 clones were not merely seeds, stalks, or unusable roots but were potentially viable marihuana plants that could produce a harvest

under the right conditions." Therefore, the Court concluded that the Defendant possessed more than 12 marihuana plants which were not kept in an enclosed, locked facility and thus, subject to arrest and prosecution under Section 4 of the Act.

Issue: Whether the Defendant's expert had sufficiently assessed the Defendant.

Holding: The court ruled that the Defendant had not established by a preponderance of the evidence that Dr. Kenewell completed a full assessment of Defendant's medical history and current medical condition in the course of a bona fide physician-patient relationship, Defendant's assertion of the medical-purpose affirmative defense fails on the first element and the charges against him not be dismissed.

The Defendant was arrested on March 16, 2010, and was charged with manufacturing marihuana. On June 30, 2010, after a preliminary examination was held, the Court conducted an evidentiary hearing on Defendant's Motion to Dismiss pursuant to Section 8 of the Act.

Defendant's arrest resulted from the execution of a search warrant at his residence, in which 16 marihuana plants were located. Defendant had a valid registry card at the time of the arrest. Defendant contended that he possessed only 12 marihuana plants because 4 of the 16 plants found by the police were "clones" which are simply stems cut from a larger plant in dirt to try to get the clones to grow. Defendant also argued that he satisfied his burden under MCL 333.26428(a)(1) because Dr. Kenewell testified that, in his professional opinion, Defendant was likely to benefit from the use of medical marihuana.

The Prosecutor contended that the Defendant was not entitled to the protections of the Act because the Defendant possessed more marihuana plants than are permitted by the Act. The Prosecutor also contended that Defendant had failed to establish that Dr. Kenewell conducted a full assessment of the Defendant before determining that Defendant suffered from a serious or debilitating medical condition.

The Court ruled that the Defendant was in possession of 16 plants rather than 12 plants because "The 4 clones were not merely seeds, stalks, or unusable roots but were potentially viable marihuana plants that could produce a harvest under the right conditions." Therefore, the Court concluded that the Defendant possessed more than 12 marihuana plants which were not kept in an enclosed, locked facility and thus, subject to arrest and prosecution under Section 4 of the Act.

Next, the Court ruled that "Because Defendant has not established by a preponderance of the evidence that Dr. Kenewell completed a full assessment of Defendant's medical history and current medical condition in the course of a bona fide physician-patient relationship, Defendant's assertion of the medical-purpose affirmative defense fails on the first element and the charges against him not be dismissed."

People v. Anthony Orlando, II, Case No. 10-010352-FH, July 26, 2010 (Lapeer County):

Issue: Whether a Defendant who is not under the care of a physician can assert a § 8 Michigan Medical Marihuana Act defense.

Holding: The Court held that a Defendant who is not being treated or under the care of a physician at the time he possessed marihuana cannot assert the affirmative defense under Section 8 of the Act. Therefore, since the Defendant cannot assert a section 8 defense, evidence to show the Defendant subsequently obtained a medical marihuana card is properly excluded from trial.

It should be noted that the Michigan Court of Appeals denied application for leave to appeal. *People v. Orlando, II*, Case No. 299899 (November 24, 2010).

Pursuant to the decision of *People v. Kolanek*, the MMMA defense was not intended to afford Defendants an after the fact exemption for otherwise illegal activities.

People v. Vanderbutts, Case No. 09-10276, April 12, 2010 (Cass County):

Issue: Whether a Defendant can assert a § 8 Michigan Medical Marihuana Act defense when the amount the Defendant had in his possession at the time of the offense exceeded the amount allowed.

Holding: The Court ruled that the "Defendant is not entitled to a dismissal of the information because the evidence established that he was in possession of a quantity of marihuana in excess of that reasonably necessary to ensure the uninterrupted availability of the drug for the purpose of treating or alleviating his medical condition." Lastly, the Court ruled that the "Defendant is not entitled to a dismissal of the information because he was not engaged in the acquisition, possession, cultivation, or manufacture of marihuana to treat his own medical condition, but rather engaged in that conduct for the actual, or potential, benefit of persons not permitted to possess marihuana."

On April 21, 2010, a Cass County Circuit Court jury unanimously convicted the Defendant, Sylvester Vanderbutts of Possession with Intent to Deliver Marihuana, Manufacturing Marihuana, Maintaining a Drug House, and Possession of Marihuana.

The testimony at trial showed Defendant had 47 marihuana plants at his residence and approximately 17 ounces of loose usable marihuana throughout his house. The officers testified that the Defendant had over a year's worth of marihuana in plants alone. The testimony indicated that the Defendant would be able to conduct approximately another 2 grows within the year, giving him well over a 3 year supply in just 1 year of growing.

The Defendant raised the affirmative defense under Section 8 of Michigan's Medical Marihuana Act prior and during the trial. The Circuit Court judge ruled prior to trial (April 12, 2010) in pertinent part, that the "Defendant is not entitled to dismissal of the

information because he has failed to prove that a physician has stated, within the course of a bona-fide physician-patient relationship, that he would benefit from the use of marihuana."

Further, the Circuit Court ruled that the "Defendant is not entitled to a dismissal of the information because the evidence established that he was in possession of a quantity of marihuana in excess of that reasonably necessary to ensure the uninterrupted availability of the drug for the purpose of treating or alleviating his medical condition." Lastly, the Court ruled that the "Defendant is not entitled to a dismissal of the information because he was not engaged in the acquisition, possession, cultivation, or manufacture of marihuana to treat his own medical condition, but rather engaged in that conduct for the actual, or potential, benefit of persons not permitted to possess marihuana."

People v. Brockless, Case No. 09-033323-FH, March 5, 2010 (Saginaw County):

Issue: Whether a Defendant can assert an affirmative defense provision stated in §8 of the Michigan Medical Marihuana Act when the Defendant did not obtain a state-issued registry identification card to possess and use marihuana under the Act until after the date of the offense.

Holding: The Court ruled that the Defendant was not required to show that he possessed a valid registry identification card on the date of the offense in order to establish an affirmative defense to the marihuana charge.

The Defendant filed a Motion to Dismiss in relation to the marihuana charge pursuant to the affirmative defense provision stated in Section 8 of the Michigan Medical Marihuana Act. The Prosecution opposed Defendant's request for dismissal, arguing that this affirmative defense was not available to the Defendant because he did not obtain a state-issued registry identification card to possess and use marihuana under the Act until after the date of the offense.

The Court ruled that the Defendant was not required to show that he possessed a valid registry identification card on the date of the offense in order to establish an affirmative defense to the marihuana charge.

People v. Partlow, Case No. 09-3933-FH, December 31, 2009 (Manistee County):

Issue: Whether the Michigan Medical Marihuana Act can be applied retroactively.

Holding: The Court was satisfied that the correct application of the statute was to apply it retroactively to cases that were pending when it became effective.

The Defendant argued that the statute should be applied retroactively prior to December 4, 2008.

The Circuit Court agreed. The Court was satisfied that the correct application of the statute was to apply it retroactively to cases that were pending when it became effective.

The result otherwise was a result that the Court suggested would be offensive to a sense of fairness.

People v. Cook, Case No. 09-47066-AR, December 14, 2009 (Marquette County):

Issue: Whether or not the defense of medical use of marihuana could be raised when the Defendant had not seen a doctor or obtained a medical marihuana card prior to arrest.

Holding: The Court found the Michigan Medical Marihuana Act requires both a registration card and a medical certificate must be obtained in order for possession of marihuana to be lawful.

The Defendant was arrested for possession of marihuana. After he was arrested, he obtained a certificate from a medical doctor indicating he suffered from a “debilitating condition” requiring the use of marihuana for treatment. The issue before the court was whether or not the defense of medical use of marihuana could be raised when the Defendant had not seen a doctor or obtained a medical marihuana card prior to arrest.

The judge first noted statutes are to be interpreted in their entirety. The Judge discussed the elaborate provisions in the statute for obtaining a medical marihuana card. The Judge then reviewed the statutory definitions. The statute defines “medical use” as being use by a “registered qualifying” patient. “Registered” refers to the requirement the qualifying patients obtain a medical marihuana identification card from the Department of Community Mental Health. “Qualifying Patient” refers to the requirement that a doctor certify the patient suffers from a “debilitating condition” that could be ameliorated by the use of marihuana.

Section 7 of the Act states: “The medical use of marihuana is allowed under state law to the extent it is carried out in accordance the provisions of this act.” The judge held this means all other use of marihuana continues to be legal and marihuana continues to be a controlled substance. The court stated only “medical use” is permitted by this language. The definition of “medical use” in the statute requires a medical marihuana card and a physician's certificate.

The court said the opening words of the affirmative defense contained in section 8 provide: “Except as provided in section 7....” and this language incorporates the requirements of section 7 in the affirmative defense (section 8). Therefore, the Court found the Medical Marihuana Act requires both a registration card and a medical certificate must be obtained in order for possession of marihuana to be lawful.

People v. Andrzejewski, Case No. B-09-0398-FH, October 19, 2009 (Kalamazoo County):

Issue: Whether the Michigan Medical Marihuana Act can be applied retroactively.

Holding: The Court relying on *People v. Rigo*, 69 Cal App 4th 409 (1999), held that the Michigan Medical Marihuana Act is not retroactive.

The Defendant sought dismissal of the criminal charges for manufacture and possession of marihuana, based on the affirmative defense provided in the Michigan Medical Marihuana Act. Defendant's arrest pre-dates the effective date of the Act, but took place after the Act was approved in a referendum. The date of the offense was on November 19, 2008.

The Court relying on *People v. Rigo*, 69 Cal App 4th 409 (1999), held that the Michigan Medical Marihuana Act is not retroactive.

People v. Shawl, Case No. 09-004937, October 12, 2009 (Iosco County):

Holding: The Court held that the "Defendant was not a registered qualifying patient at the time of the arrest and is not entitled to dismissal of the case."

People v. Finney, Case No. 09-4081, September 9, 2009 (Midland County):

Issue: Whether the Defendant can assert an MMMA §8 defense.

Holding: The Midland County Circuit Court ruled that the Defendant offered no evidence to the court with regard to element (2) of Section 8(a). The Court therefore had no basis at this time to conclude that the amount of marihuana in Defendant's possession on January 29, 2009 was not more than was reasonably necessary to ensure the uninterrupted availability of marihuana for the purpose of treating or alleviating the Defendant's serious or debilitating medical condition within the meaning of element (2).

People v. McGrath, Nos. 099103, 09-9104, September 9, 2009 (Wexford County):

Issue: Whether the Michigan Medical Marihuana Act can be applied retroactively.

Holding: The Wexford County Circuit Court ruled that the act is only prospective. The court ruled it will only apply as it relates to charges brought under the public health code as it relates to marihuana from the date on and after the enactment of the statute.

People v. Miron, Case No. 09-1867-FH, September 2, 2009 (Alger County):

Issue: Whether post-approval by a physician was meant to be a defense by the Michigan Medical Marihuana Act.

Holding: The court held that post-arrest approval under the MMMA failed to satisfy the intent of the Act. The Act was not promulgated, in the Court's opinion, to encourage the use of marihuana for a panoply of problems legitimate or not developed post-arrest and approximately six months after the Acts passage.

The Defendant was arrested and charged some 5 months after passage of the Medical Marihuana Act. Defendant had not presented to the Court any information suggesting that he had a serious illness or was being treated for any particular disease or condition or had been counseled prior to his arrest that marihuana usage may have some palliative benefit for him.

It was the opinion of the Court that the intent of the MMA was not to provide individuals with a get out of jail free card by seeking out a physician after being arrested on a controlled substance abuse charge.

Under the facts, this Court found that any post-arrest approval under the MMA failed to satisfy the intent of the Act. The Act was not promulgated, in the Court's opinion, to encourage the use of marihuana for a panoply of problems legitimate or not developed post-arrest and approximately six months after the Acts passage.

The Court noted that had the legislature intended post-arrest approvals under the MMA, the same could easily have been codified within the Act by allowing or providing for a post-arrest assertion of the affirmative defense found within the Act. As poorly written as this Act is; that aspect was not incorporated for good reason.

People v. Bliss, Case No. 09-05412-AR, September 1, 2009 (Kent County):

Holding: The Kent County Circuit Court ruled that Section 8 reveals no express indications that it should be applied retroactively.

People v. Rude, Case No. 09-002664-FH, August 21, 2009 (Alpena County):

Issue: Whether the Michigan Medical Marihuana Act applies and offers protection from prosecution, when a physician's approval and certification does not predate the cultivation or use of marihuana.

Holding: The Court held that it is reasonable to embrace the exception of an exigent circumstance which may offer the Defendant relief, but the Court can find no such circumstances in these facts.

The Alpena County Circuit Court stated that for the Act to apply and offer protection from prosecution, a physician's approval and certification must predate the cultivation or use of marihuana. The Court held that it is reasonable to embrace the exception of an exigent circumstance which may offer the Defendant relief, but the Court can find no such circumstances in these facts. The Court cited *People v. Rigo*, 69 Cal. App. 4th 409 (1999).

People v. Dietz, Case No. -, July 27, 2009 (Branch County):

Issue: Whether the Michigan Medical Marihuana Act applies retroactively.

Holding: The Branch County Circuit Court ruled that the statute was not intended to apply to cases pending at the time of its enactment, and therefore, the Defendant was precluded from raising the affirmative defense argument.

People v. Burke, Case No. 08-17863-FH, April 16, 2009 (Livingston County):

Issue: Whether the Michigan Medical Marihuana Act applies retroactively.

Holding: The Livingston County Circuit Court ruled that the statute was not intended to apply to cases pending at the time of its enactment, and therefore, the Defendant was precluded from raising the affirmative defense argument.

People v. Peterson, Case No. 09-1854-FH, April 6, 2009 (Alger County):

Issue: Whether the Michigan Medical Marihuana Act applies retroactively.

Holding: The Alger County Circuit Court ruled that the medical marihuana law was retroactive, and granted the Defendant's motion to dismiss predicated on the affirmative defense.

DISTRICT COURT DECISIONS

People v. Carruthers, Case No. C-11-0912A, October 5, 2011 (Macomb County):

In this case, the defendant decided to make rice krispy treats for his patients which included approximately 12 ounces of marihuana. When the 12 ounces of marihuana were combined with the rice krispies, butter and marshmallows, the resulting total weight of the rice krispy treats was above the legal amount permitted under the MMMA.

Issue: Whether the allowable weight that a caregiver may possess is determined solely by the weight of the marihuana itself or the aggregate weight of the entire mixture.

The MMMA defines “usable marihuana” as follows:

Holding: The term “usable mixture” as defined in the MMMA includes the aggregate weight of the marihuana and any filler wherein the only exception is when the filler is a seed, stalk, and root or water. Here, the parties stipulated that the aggregate weight of the mixture exceeded the amount that could be legally possessed by a caregiver. Therefore, Defendant’s Motion to dismiss is denied.

People v. Hosfeld, Case No. 2011-0079-SM, June 24, 2011 (Branch County):

Issue: Whether the Michigan Medical Marihuana Act is a defense against Marihuana being a schedule 1 controlled substance.

Holding: The Court held *Kazmierczak, supra*, was still governing and that the act didn’t remove marihuana from the realm of contraband. In addition, the Court held that the act created affirmative protections as opposed to legalizing anything and that the Deputy had no obligation to inquire about card status, rather a card holder had an obligation to advise the Deputy of their cardholder status.

The case involved a traffic stop for speeding. As the Deputy approached the vehicle he detected the odor of burnt/burning marihuana coming from inside the vehicle. He asked the driver (defendant) and the female passenger about the smell and they both denied any MJ, instead claiming the odor to be tobacco. The Deputy, who was previously attached to SWET and has narcotics enforcement training, did a PC/automobile exception search on the vehicle and found a small quantity of MJ in the ashtray.

The defense attorney filed a motion to dismiss claiming that the odor of marihuana was no longer, in light of MMMA, PC for a search. His argument was that since it was now 'legal' for some people to possess marihuana that MJ is no longer clearly contraband and therefore cannot be used to form PC for the search. It is interesting to note that the Defendant is not a card holder nor has he claimed section 8. The attorney argued that the Deputy had an obligation to specifically ask if any of the occupants have a MMMA card before conducting a warrantless search.

Prosecutor argued that the act didn't legalize marihuana, that it was still a schedule 1 drug, and that the act didn't provide any support for the defendant's argument. Prosecutor also noted that *People v. Kazmierczak*, 461 Mich. 411 (2000), was still good law and the defense attorney acknowledged as much. The Court denied the motion to dismiss. The Court held *Kazmierczak, supra*, was still governing and that the act didn't remove marihuana from the realm of contraband. In addition, the Court held that the act created affirmative protections as opposed to legalizing anything and that the Deputy had no obligation to inquire about card status, rather a card holder had an obligation to advise the Deputy of their cardholder status.

City of Dearborn v. Brandon, Case Nos. 10C214, 10C0215, March 7, 2011 (Wayne County):

Issue: Whether the Michigan Medical Marihuana Act is a defense against Marihuana being a schedule 1 controlled substance.

Holding: The District Court found that in consequences of the lawful designation of marihuana as a Schedule I narcotic under the Controlled Substances Act the MMMA is rendered unconstitutional and void in its entirety by operation of the Supremacy Clause of the United States Constitution.

The District Court found that in consequences of the lawful designation of marihuana as a Schedule I narcotic under the Controlled Substances Act the MMMA is rendered unconstitutional and void in its entirety by operation of the Supremacy Clause of the United States Constitution.

People v. Chase, Case No. 10-FY-033, September 23, 2010, reaffirm on October 27, 2010 (Delta County):

Issue: Whether the Michigan Medical Marihuana Act is a defense against Marihuana being an impairing substance.

Holding: The legislature in passing laws to insure the safety of the motoring public has indicated that regardless of the impairment, or obvious impairment, by a driver certain substances in a driver's body are still and remain illegal." Finally, the Court stated that the "Medical Marihuana Act did not abrogate their ability to prescribe what they believe to be the law that protects the motoring public."

People v. Gilbert, Case No. 10-05-068 SD, September 8, 2010 (Manistique County):

Issue: Whether the Defendant has an affirmative defense under Section 8 of the Michigan Medical Marihuana Act.

Holding: The Court ruled that the Defendant's appointment with her physician was made prior to arrest, but that was all he did. Therefore, the Court found that the medical use of marihuana affirmative defense was not available to the Defendant as a matter of law.

On May 7, 2010, the Defendant was arrested by the Michigan State Police for OWI and for possession of marihuana. The Defendant raised the affirmative defense under Section 8 of the Act.

On May 15, 2010, the Defendant received a certification from a physician prescribing medical use of marihuana and the Michigan Medical Marihuana Registry form was submitted to the state on May 17, 2010.

The Court rule that the Defendant's appointment with her physician was made prior to arrest, but that was all he did. There was no prior identification of the illness or debilitating medical condition identified by a qualified physician, no reasonably necessary identified medically therapeutic or palliative benefit from the use of marihuana, and no application to the State of Michigan as required by the statute.

Therefore, the Court found that the medical use of marihuana affirmative defense was not available to the Defendant as a matter of law.

City of Troy v. Dodge, Case No. 09-000927OM-01, October 29, 2009 (Oakland County):

Issue: Whether the Defendant has an affirmative defense under Section 8 of the Michigan Medical Marihuana Act.

The Defendant filed a Motion to Dismiss pursuant to Section 8 of the Act.

Holding: The Court stated that the Defendant did not seek the protection of the Act until after he was charged with the offense of possession of marihuana. At no time prior or during the arrest did the Defendant assert that he had a medical history that required the use of marihuana, or that he had a debilitating medical condition as defined in the Act.

People v. Collins, Case No. 09-1594-SM, September 10, 2009 (Livingston County):

Issue: When the Defendant is given the opportunity to have an evidentiary hearing.

Holding: The Livingston County District Court ruled that provisions of MCL 333.26428(3)(b) requiring an evidentiary hearing to be held to afford the Defendant an opportunity to establish the elements in subsection (a) was only applicable after the Defendant had established the existence of a registry card at the time of offense.

People v. Martin, Case No. 09-6217-SM, September 30, 2009 (Dickinson County):

Issue: Whether the Defendant has an affirmative defense under Section 8 of the Michigan Medical Marihuana Act.

Holding: The Dickinson County District Court ruled that the affirmative defense in section 8 was subject to the limitations of section 7 which was subject to section 4. The Court held that to be protected by the statute, an individual must have the card prior to the date of the offense.

People v. Dutton, Case No. 08-2298-SM, August 20, 2009 (Eaton County):

Issue: Whether the Michigan Medical Marihuana Act applies retroactively.

Holding: The Eaton County District Court ruled that the Medical Marihuana Act cannot be applied retroactively. The Court stated that Section 4(a) of the act was clear and that it does not apply to a case in which Defendant was stopped with marihuana then seeks physician approval, and then gets an ID card after the event.

MICHIGAN ATTORNEY GENERAL'S OPINION

Attorney General Opinion 7262, released November 10, 2011:

The Attorney General was asked whether a law enforcement officer who arrests a patient or primary caregiver registered under the Michigan Medical Marihuana Act (MMMA or Act), Initiated Law 1 of 2008, MCL 333.26241 *et seq.*, must return marihuana found in the possession of the patient or primary caregiver upon his or her release from custody.

The Attorney General noted "That under section 4(h) of the MMMA, a law enforcement officer must return marihuana to a registered patient or caregiver if the individual's possession complies with the MMMA. But the federal Controlled Substance Act (CSA) prohibits the possession or distribution of marihuana under any circumstance."

He further noted that "If a law enforcement officer returns marihuana to a patient or caregiver as required by section 4(h), the officer is distributing or aiding and abetting the distribution or possession of marihuana by the patient or caregiver in violation of the CSA. Thus, a Michigan law enforcement officer cannot simultaneously comply with the federal prohibition against distribution or aiding and abetting the distribution or possession of marihuana and the state prohibition against forfeiture of marihuana. By returning marihuana to a registered patient or caregiver, a law enforcement officer is exposing himself or herself to potential criminal and civil penalties under the CSA for the distribution of marihuana or for aiding or abetting the possession or distribution of marihuana."

Therefore, the Attorney General opined that "Section 4(h) of the Michigan Medical Marihuana Act, MCL 333.26424(h), which prohibits the forfeiture of marihuana possessed for medical use, directly conflicts with and is thus preempted by, the federal Controlled Substances Act, 21 USC 801 *et seq.*, to the extent section 4(h) requires a law enforcement officer to return marihuana to a registered patient or primary caregiver upon release from custody."

Attorney General Opinion 7261, released September 15, 2011:

Attorney General opined that "2009 PA 188, which prohibits smoking in public places and food service establishments, applies exclusively to the smoking of tobacco products. Because marihuana is not a tobacco product, the smoking ban does not apply to the smoking of medical marihuana."

He further opined that "The Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 *et seq*, prohibits qualifying registered patients from smoking marihuana in the public areas of food service establishments, hotels, motels, apartment buildings, and any other place open to the public."

Lastly, he opined that "An owner of a hotel, motel, apartment building, or other similar facility can prohibit the smoking of marihuana and the growing of marihuana plants anywhere within the facility, and imposing such a prohibition does not violate the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 *et seq*."

Attorney General Opinion 7259, released June 28, 2011:

The Attorney General opined that "The Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 *et. seq.* prohibits the joint cooperative cultivation or sharing of marihuana plants because each patient's plants must be grown and maintained in a separate enclosed, locked facility that is only accessible to the registered patient or the patient's registered primary caregiver."

Further, he states on page 8 of his opinion that "It also protects against unauthorized access to marihuana plants because, at any given time, there is only one person responsible and accountable for a patient's plants. The plain language of the MMMA thus prohibits the joint cooperative cultivating or sharing of marihuana plants because only the individual authorized to cultivate the marihuana plants, either the registered patient or the patient's registered primary caregiver, may have access to the enclosed, locker facility housing the marihuana plants intended for the individual patient's use."

Attorney General Opinion Number 7250, August 31, 2010:

The Michigan Attorney General opined that the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 *et seq*, does not prohibit the Department of Community Health from entering into an agreement or contract with an outside vendor to assist the department in processing applications, eligibility determinations, and the issuance of identification cards to patients and caregivers, if the Department of Community Health retains its authority to approve or deny issuance of registry identification cards.

However, 2009 AACCS, R 333.121(2) promulgated by the Department of Community Health under the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 *et seq*, which provides that the confidential information "may only be accessed or released to authorized employees of the department," prevents the Department of Community Health from entering into a contract with an outside vendor to process registry applications or renewals.

